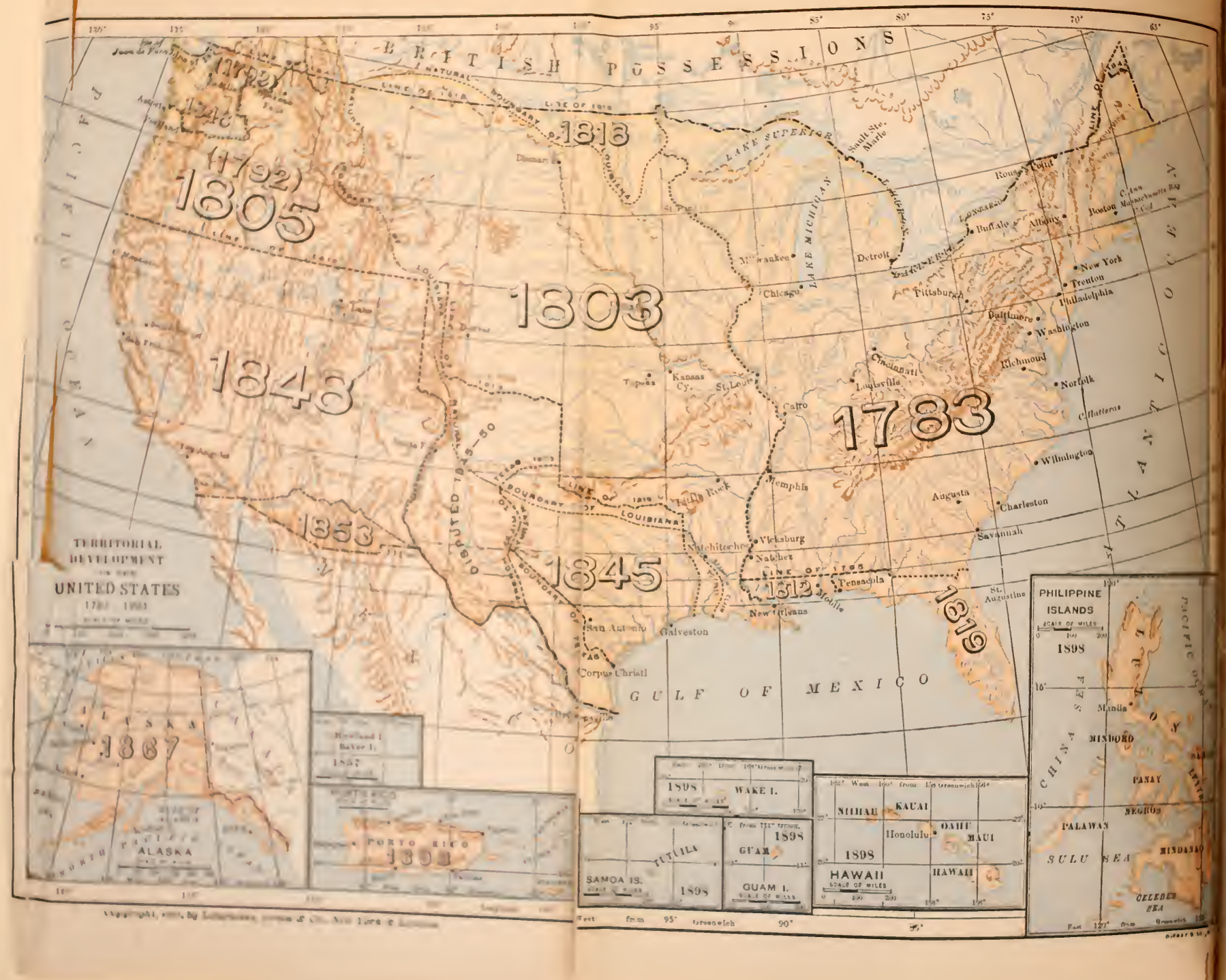
AMERICAN CITIZEN SERIES.

EDITED BY

ALBERT BUSHNELL HART, LL.D.

ACTUAL GOVERNMENT

ALBERT BUSHNELL HART.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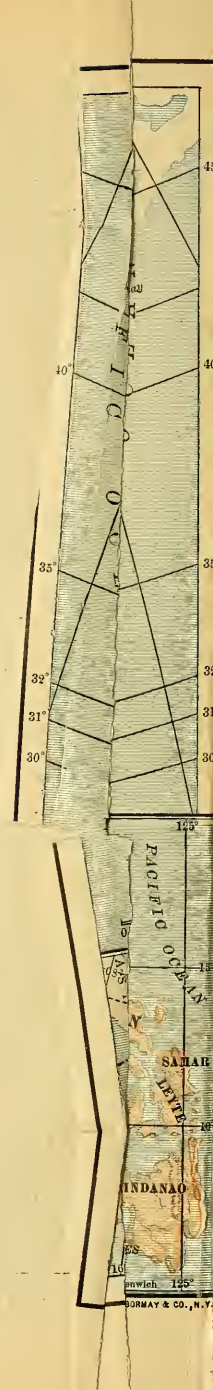
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American Citizen Series.

Actual Government

AS APPLIED UNDER AMERICAN CONDITIONS.

BY

ALBERT BUSHNELL HART, LL.D.,

Professor of History in Harvard University;

AUTHOR OF "FORMATION OF THE UNION," "NATIONAL IDEALS," "FOUNDATIONS OF AMERICAN FOREIGN POLICY," ETC., ETC.

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To MARY PUTNAM HART,

JOINT GOVERNOR.

Preface.

WHERE there are so many clear, well-thought, and accurate text-books upon the government of the United States, a new book requires an explanation, if not an apology. The reason for this volume is the conviction that there is room for a college and upper high-school text-book which shall emphasize five points of view with respect to American government.

First of all, the American governmental system should be treated as a whole: state government and the various phases of local government should come in, not as afterthoughts to the national system, but as integral parts of one American government.

The second necessity is to study the actual workings of government: the text of constitutions and of statutes is only the enveloping husk; the real kernel is that personal interest and personal action which vitalizes government. For example, the adoption of rules by the House is only preliminary to the exercise of the extra-constitutional authority of the speaker and the committees. Description of realities sometimes becomes a criticism; in the attempt to picture things as they are, it will sometimes be necessary to tell the truth about things which we wish were otherwise.

In the third place, a thorough text-book must discuss not only the machinery of government but the operations of government; legislatures do not exist simply to be

investigated by students, but to express the public will that things be done; the functions of governments — such as the administration of justice, taxation, expenditure, transportation, the maintenance of order — are more important than the details of governmental organization. Throughout I have tried to make clear the make-up of governments and the status of officials; but I have laid special stress on the purpose, extent, division, exercise, and limitations of governing power.

In the fourth place the historical part of the book is not separated out from the descriptive; instead of a preliminary sketch of colonial and Revolutionary institutions, I have preferred to begin the discussion of each large topic with a brief account of how that particular agency or function came to be.

Finally, there is at the service of the student of American government a large body of cogent material, both essential sources and carefully wrought secondary books; but it is still undigested. I have therefore thought it a proper part of this work to prefix a bibliography of the subject, as well as to insert classified references at the heads of the chapters.

I am under special obligation to Mr. C. S. Hamlin, Mr. Edward Atkinson, Mr. E. H. Goodwin, and Prof. P. H. Hanus for suggestions on portions of the proof; and the expert verification of Mr. David M. Matteson has added definiteness and exactness to statements on almost every page.

Preface to the Third Edition.

The favor shown to this book enables me to take advantage of this opportunity to correct a few errors and especially to insert the recent literature of the subject in the preliminary and chapter bibliographies.

ALBERT BUSHNELL HART.

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THE preface of this book sufficiently explains the writer's point of view, and makes clear that this is not a treatise on constitutional law either federal, state, or municipal; but an attempt to describe the government as one might undertake to describe a great railroad. To prepare an adequate account of the Chicago and Northwestern, for instance, one would first study the founding of the road; he would then examine its physical plant, buildings, material; then he would study the personnel, from president and board of directors down to switchmen and track-layers, the treasurer's office and system of book-keeping, the tenure of the employees and their wages; when all this was described, he would enter on the subject which most interests the observer and the investor, — the operation of the road, kinds of traffic (passenger, freight, express, mail), gross receipts, operating expenses, dividends, bonds, stock and floating debt, methods of conducting terminals, train-despatching, accidents, and repairs. For such a study, one would seek not only published rate-sheets and annual reports but also the experience of travellers and shippers and practical railroad men.

In using this book it must constantly be kept in mind that it is an attempt to explain both the organization and the functions of government, not simply by what constitutions and statutes say ought to be done, but by the experience of what is done. Compared with the immense body of facts which ought to be examined, the text is brief, and many important details must remain undescribed. It is expected that students will add to the necessarily general statements of the text through some of

the readings suggested at the chapter headings. The paragraph numbers make it easy to assign lessons or readings from day to day; and by using some of the commonest materials a new insight may be had into many important fields.

The literature of American government has been hitherto so little noted that a select bibliography has been placed at the beginning of the book, so as to furnish an opportunity for detailed and critical study of significant governmental questions. In the author's *Manual of American History, Diplomacy, and Government* is a printed list of several hundred such brief research subjects.

In the long run, the student must verify or dispute many statements of this book through such knowledge of American government as he can get direct from men engaged in government as administrators, as employees, as politicians, or as business and professional men, whose experience throws them into contact with governments in action.

SMALL REFERENCE LIBRARY.

It may be convenient to make a brief list of a few of the most helpful books on American government. The list can be readily enlarged by using the select bibliography which follows and the bibliographical aids there enumerated.

For General Reference.

Bryce, James. *The American Commonwealth.* (2 vols., 3d ed., rev. N. Y., 1901.)

Goodnow, Frank Johnson. *Politics and Administration. A Study in Government.* (N. Y., 1900.)

McClain, Emlin. *Constitutional Law in the United States.* (*American Citizen Series*, N. Y., 1905.)

Willoughby, Westel Woodbury. *The American Constitutional System.* (N. Y., 1904.)

For Special Reference.

Cooley, Thomas McIntyre. *A Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the Union.* (6th ed. Boston, 1890.)

Eliot, Charles William. *American Contributions to Civilization, and other Essays and Addresses.* (N. Y., 1897.)

Follett, Mary Parker. *The Speaker of the House of Representatives.* (N. Y., 1896.)

Goodnow, Frank Johnson. *Principles of the Administrative Law of the United States.* (N. Y., etc., 1905.)

Albert Bushnell Hart (editor). *American Citizen Series.* (5 vols. published, N. Y., 1899–1907.)

Hart, Albert Bushnell. *National Ideals Historically Traced.* (*American Nation Series*, N. Y., 1907.)

Roosevelt, Theodore. *American Ideals, and other Essays, Social and Political.* (N. Y., 1897.)

Story, Joseph. *Commentaries on the Constitution of the United States.* (2 vols., Boston, 1891, and other editions.)

Willoughby, Westel Woodbury (editor). *The American State Series.* (8 vols., N. Y., 1906–1908.) Described below.

SELECT BIBLIOGRAPHY OF AMERICAN GOVERNMENT.

No formal bibliography of government from the point of view of practice has been published; and the material is hard to deal with, for most of the literature of discussion and criticism previous to the Civil War has little application to government in action; and many present-day books show little trace of study, or of acquaintance with real conditions. This bibliography, therefore, represents only the most serviceable books, with some references to periodicals of special significance: the rich and instructive materials in periodicals cannot be brought within the limits of a brief list of references like the following.

I. Bibliographies and Finding Lists.

BOWKER, RICHARD ROGERS, and ILES, GEORGE. *The Reader's Guide in Economic, Social, and Political Science.* (N. Y., 1891.) — This book is a valuable compilation, including references both to books and to periodicals; it lays more stress on social and economic literature than on political.

CHANNING, EDWARD, and HART, ALBERT BUSHNELL. *Guide to the Study of American History.* (Boston, etc., 1896.) — Though devoted especially to history, this book contains several lists of descriptive material: especially, bibliographical aids (§ 16); geographical material (§ 21); colonial records (§ 29); United States records (§§ 16*e*, 30–30*e*); works of statesmen (§ 32); colonial institutions (§§ 146–148); foundation of the Constitution (§§ 137, 142, 149, 154–156).

FLETCHER, WILLIAM ISAAC. *The A. L. A. Index: An Index to General Literature.* (2d ed. Boston, etc., 1901.) — Refers to volumes of collected essays and like material, and thus supplements Poole's Index.

FOSTER, WILLIAM EATON. *References to the Constitution of the United States.* (N. Y., 1890.) — The best bibliography of the kind; very convenient and serviceable up to its date.

HART, ALBERT BUSHNELL. *Manual of American History, Diplomacy and Government.* (Cambridge, 1908.) — Contains suggestions on the literature of government (§ 24); two lists of lectures on government with special references (§§ 96–133); special bibliographies of contested points (§§ 198–229); and about 800 governmental topics for investigation (§§ 283–299).

HART, ALBERT BUSHNELL. *Introduction to the Study of Federal Government.* (Boston, 1891.) — § 469 of this book is a bibliography of the national government, especially considered as a federation.

HART, ALBERT BUSHNELL, editor. *The American Nation: A History.* (27 vols., N. Y., 1904–1908.) — Critical essays on authorities in each volume.

JONES, LEONARD AUGUSTUS. *An Index to Legal Periodical Literature.* (2 vols., Boston, 1888, 1899.) — The most convenient key to the numerous valuable articles on government in law periodicals. It includes many articles from general periodicals.

LARNED, JOSEPHUS NELSON, editor. *The Literature of American History: A Bibliographical Guide.* (Boston, 1902.)— A bibliography of American history with over 4,000 titles, each annotated by an expert.

LUNT, EDWARD CLARK. *Key to the Publications of the United States Census, 1790–1887.* (Boston, 1888; American Statistical Association, *Publications,* New Series, I, 63–125.)

Municipal Affairs. (N. Y., 1897–1902.) — Vol. V, No. 1 (March, 1901), is an invaluable classified list of books and articles on local government; by far the best thing of its kind.

POOLE, WILLIAM FREDERICK, FLETCHER, WILLIAM ISAAC, and others. *Poole's Index to Periodical Literature, 1802–1881.* (Rev. ed. 2 vols. Boston, etc., 1893.) — *First Supplement, 1882–1886.* (Boston, etc., 1888.) — *Second Supplement, 1887–1891.* (Boston, etc., 1893.) — *Third Supplement, 1892–1896.* (Boston, etc., 1897.) — *Fourth Supplement, 1897–1902.* (Boston, etc., 1903.) — The standard guide into general periodical literature, of great service on questions of government. — See the select list of periodicals below.

RINGWALT, RALPH CURTIS. *Briefs on Public Questions, with selected lists of references.* (N. Y., 1906.) Contains lists of references on twenty-five important questions in politics, economics and sociology, — based on the more extended BROOKINGS, WALTER DUBOIS, and RINGWALT, RALPH CURTIS, *Briefs*

for Debate on Current Political, Economic, and Social Topics. (N. Y., 1896.)

WINSOR, JUSTIN, editor. *Narrative and Critical History of America.* (8 vols., Boston, etc., 1884–1889.) — In Vol. VII, 255–266, is a careful study of the literature of the federal constitution.

II. Constitutional and Governmental Histories.

Very few historians have essayed the task of writing a comprehensive history of the United States with the colonial beginnings, except as a text-book for Schools. The text-books which pay most attention to the organization and development of government are: Edward Channing, *Students' History* (new edition, N. Y., 1902); Albert Bushnell Hart, *Essentials in American History* (N. Y., 1905); Alexander Johnston, *High School History* (edited by William MacDonald, N. Y., 1901); Harry Pratt Judson, *Growth of the American Nation* (Meadville, Pa., etc., 1895); Andrew Cunningham McLaughlin, *History of the American Nation* (N. Y., 1899); James A. Woodburn and Thomas F. Moran, *American History and Government* (N. Y., 1906).

The histories described below cover in detail considerable areas of the constitutional history of the United States; but without very distinct treatment of the source and growth of institutions as they now are: —

ADAMS, HENRY. *History of the United States of America during the Administrations of Jefferson and Madison.* (9 vols., N. Y., 1889–1891.) — One of the most illuminating works ever written about American History and institutions.

HART, ALBERT BUSHNELL, editor. *The American Nation: A History.* (27 vols., N. Y., 1904–1908.) — Many chapters on constitutional development and economic and social questions.

HOLST, HERMANN EDUARD VON. *The Constitutional and Political History of the United States.* (Translated by John J. Lalor and others. 7 vols. and an index vol., Chicago, 1877–1892.) — Devoted particularly to the discussion of the constitutional elements of the slavery contest.

MCMASTER, JOHN BACH. *History of the People of the United States from the Revolution to the Civil War.* (6 vols., N. Y., 1883–1906.) — The published volumes cover the period from 1783 to 1842 and deal habitually with social rather than constitutional questions.

RHODES, JAMES FORD. *History of the United States from the Compromise of 1850.* (7 vols., N. Y., 1893–1906.) — Excellent in discussions as to the nature of the Union.

SCHOULER, JAMES. *History of the United States of America under the Constitution.* (6 vols., Rev. ed. N. Y., 1895–1899.) — Covers the field from 1780 to 1865, but takes rather the political than the institutional standpoint.

The books enumerated below are brief works setting forth the development of the nation, and they are therefore serviceable in the study of government: —

American History Series. (7 vols., N. Y., 1892–1902.) — Written by George Park Fisher, William Milligan Sloane, Francis Amasa Walker, and John William Burgess; covers the period from the discovery to 1876; the later volumes have much discussion on the principles of American government.

CURTIS, GEORGE TICKNOR. *Constitutional History of the United States.* (2 vols., N. Y., 1889, 1896.) — Volume I is a reprint of the same writer's thorough *History of the Constitution* (2 vols., N. Y., 1854–1858). Volume II, covering the field from 1789 to 1877, is a work of learning, and is useful, though not quite finished at the death of the writer.

FROTHINGHAM, RICHARD. *The Rise of the Republic of the United States.* (Boston, 1872.) — A careful though dry study of the foundations in colonial experience, and of the slow development of national government.

HART, ALBERT BUSHNELL, editor. *Epochs of American History.* (3 vols., rev. ed., N. Y., 1897–1898.) — Three volumes, by Reuben Gold Thwaites, Albert Bushnell Hart, and Woodrow Wilson, covering American history from the discovery till near the present day; with bibliographies and chapter bibliographies.

JOHNSTON, ALEXANDER. *History of American Politics.* (4th ed., rev. by W. M. Sloane. N. Y., 1898.) — Essentially a succinct account of the questions discussed in Congress and of the issues of presidential elections, down to 1897.

LANDON, JUDSON STUART. *The Constitutional History and Government of the United States.* (Rev. ed. Boston, etc., 1900.) — A good general account of the constitutional history of the United States.

SMITH, GOLDWIN. *The United States: An Outline of Political History, 1492–1871.* (N. Y., 1893.) — A very brilliant study of the underlying causes and principles of American institutions as shown in the history of the country. Not very specific.

STANWOOD, EDWARD. *A History of the Presidency.* (Boston, etc., 1904.) — A revision of his *History of Presidential Elections.* Contains a careful account of every presidential election, with platforms, votes, etc.

III. Formal Descriptions of American Government.

Civil government is a study widely pursued in American schools; and there is a long list of text-books, for the most part now out of date. Among the most useful of the newer available text-books are: Anna Laurens Dawes, *How we are Governed* (Boston, 1885); Charles Fletcher Dole, *The American Citizen* (Boston, 1891); Jesse Macy, *Our Government* (Rev. ed., Boston, 1890); Westel Woodbury Willoughby, *Rights and Duties of American Citizenship* (N. Y., 1898).

A really good and thorough account of the conditions and tendencies of American government should include not only the national government and administration, but also a description of the American representative system, and an account of state and local governments. A few books may be mentioned as fulfilling these conditions: —

ASHLEY ROSCOE LEWIS. *The American Federal State.* (N. Y., 1902.) — A comprehensive and useful book.

BRYCE, JAMES. *The American Commonwealth.* (2 vols., 3d ed. rev. N. Y., 1901.)—The very best description of the American system, drawn by a keen and impartial observer. A meaty and complete book, every sentence of which has meaning. By its exactitude of style and quality of tone the book is well fitted to be a basis for class work. It is especially rich on state and local government.

BRYCE, JAMES. *The American Commonwealth.* (Abridged edition, N. Y., 1896.) — Prepared for class use, but still rather full for a text-book, and inferior to the larger edition in fulness of treatment and interesting illustration.

CARLIER, AUGUSTE. *La République Americaine: États Unis.* (4 vols. in 5 pts., Paris, 1890.) — A long and laborious book, with no great evidence of incisive judgment.

HINSDALE, BURKE AARON. *The American Government, National and State.* (Rev. ed. Chicago, 1895.) — A very good, safe, sane book, with abundant reference to actual practice. Preceded by a good historical sketch of the federal government. Only one brief chapter on local government.

TOCQUEVILLE, ALEXIS DE. *Democracy in America.* (2 vols., Paris, 1835–1840. The most available translation is by Henry Reeve; various editions.) — After the lapse of nearly seventy years, still a profound and suggestive book. The first writer to comprehend the significance of town government.

WILLOUGHBY, WESTEL WOODBURY. *The American State Series* (8 vols., New York, 1904–1908), as follows: — Baldwin, Simeon E. *The American Judiciary;* Fairlie, John A. *Local Government in Towns, Counties and Villages;* Finley, J. H. *The American Executive, and Executive Methods;* Goodnow, F. J. *City Government in the United States;* Macy, Jesse. *Party Organization;* Reinsch, Paul S. *American Legislatures and Legislative Methods;* Willoughby, Westel W. *The American Constitutional System;* Willoughby, William F. *Territories and Dependencies.*

WILSON, WOODROW. *The State: Elements of Historical and Practical Politics.* (Rev. ed. Boston, 1900.) — An account of governments in general from the earliest times. Chapter xi is an excellent summarized description, in about a hundred pages, of government in the United States, including that in the states.

IV. Constitutional Treatises.

All the formal treatises on the constitutional law of the United States review the make-up of the national government and discuss its powers. A very few of them — notably Von Holst and Wharton — discuss state and local government. Few of the treatises written before the Civil War now have weight of authority, except the classics like Kent and Story, which have been published in successive critical editions. Through the foot-notes to the treatises, both to cases and to historical works, we may reach first-hand material of the highest value, bearing on all sides of American government; for they refer both to state and federal cases. The principal modern treatises are as follows: —

BATEMAN, WILLIAM O. *Political and Constitutional Law of the United States of America.* (St. Louis, 1876.) — One of the

earliest attempts to treat state and national government together, as one in origin and differentiated in purpose.

BLACK, HENRY CAMPBELL. *Handbook of American Constitutional Law.* (2d ed. St. Paul, 1897.) — The most recent thorough treatise of its kind.

BOUTWELL, GEORGE SEWALL. *The Constitution of the United States at the End of the First Century.* (Boston, 1895.) — A brief treatise, taking up the clauses of the constitution *seriatim*, and illustrating them by Supreme Court Cases.

BURGESS, JOHN WILLIAM. *Political Science and Comparative Constitutional Law.* (2 vols. Boston, 1890.) — A very learned work, with frequent comparisons with foreign governments. Little reference to practice.

COOLEY, THOMAS MCINTYRE. *The General Principles of Constitutional Law in the United States of America.* (3d ed., rev. by A. C. McLaughlin. Boston, 1898.) — A good brief treatise on the subject, by a great constitutional lawyer.

COOLEY, THOMAS MCINTYRE. *A Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union.* (6th ed. Boston, 1890.) — One of the few systematic books on state government, by a master of the subject.

DILLON, JOHN FORREST. *Commentaries on the Law of Municipal Corporations.* (2 vols., 4th ed. 1890.) — The standard law-book on the subject, by a great corporation lawyer.

FOSTER, ROGER. *Commentaries on the Constitution of the United States, Historical and Juridical; with Observations upon the Ordinary Provisions of State Constitutions and a Comparison with the Constitutions of other Countries.* (1 vol., published in Boston, 1896.) — Very lucid, and abounding in illustrations drawn from actualities.

FREUND, ERNST. *The Police Power, Public Policy and Constitutional Rights.* (Chicago, 1904.) — Very good in its field.

GOODNOW, FRANK JOHNSON. *The Principles of the Administrative Law of the United States.* (N. Y., 1905.) — Rewritten from his *Comparative Administrative Law.* (2 vols., N. Y., etc., 1893.) — A clear exposition of this important and neglected subject; includes state and local systems.

HARE, JOHN INNES CLARK. *American Constitutional Law.* (2 vols., Boston, 1889.) — An ambitious and serviceable work.

HART, ALBERT BUSHNELL. *National Ideals Historically Traced.* (*American Nation*, XXVI, N. Y., 1907.) — Discussions of the rise and development of a series of institutions.

HOLST, HERMANN EDUARD VON. *The Constitutional Law of the United States of America.* (Translated by A. B. Mason. Chicago, 1887.) — An excellent brief book, with a study of the state and city governments. Especially adapted for laymen.

HURD, JOHN CODMAN. *The Theory of our National Existence, as shown by the Action of the Government of the United States since 1861.* (Boston, 1881.) — A dry but powerful treatise on the nature of the government.

KENT, JAMES. *Commentaries on American Law.* (14th ed., revised by O. W. Holmes. 4 vols., Boston, 1896.) — The treatment of public law in this classic work relates almost wholly to the federal government.

LIEBER, FRANCIS. *Contributions to Political Science, including Lectures on the Constitution of the United States and other Papers.* (Philadelphia, 1881. Vol. II of his *Miscellaneous Writings.*) — One of the earliest writers to seek for the real spirit of American government.

MCCLAIN, EMLIN. *Constitutional Law in the United States.* (*American Citizen Series*, N. Y., 1905.) — A brief, systematic work, clear, authoritative, and modern.

MILLER, SAMUEL FREEMAN. *Lectures on the Constitution of the United States.* (N. Y., 1891.) — By a justice of the Supreme Court.

ORDRONAUX, JOHN. *Constitutional Legislation in the United States; its Origin, and Application to the Relative Powers of Congress and of the State Legislatures.* (Philadelphia, 1891.) — A modern and serviceable work.

PATTERSON, CHRISTOPHER STUART. *The United States and the States under the Constitution.* (Philadelphia, 1888.) — A discussion of the constitutional status of the states.

POMEROY, JOHN NORTON. *An Introduction to the Constitutional Law of the United States.* (10th ed., rev. by E. H. Bennett. Boston, 1888.) — A standard and much quoted work.

ROGERS, HENRY WADE, editor. *Constitutional History of the United States as seen in the Development of American Law.* (N. Y., 1889.) — A series of essays by various hands.

SAGE, BERNARD J. (pseudonym P. C. Centz). *The Republic of Republics; or, American Federal Liberty.* (4th ed. Boston, 1881.) — Best statement of states-rights principles.

STORY, JOSEPH. *Commentaries on the Constitution of the United States, with a Preliminary Review of the Constitutional History of the Colonies and States before the Adoption of the Constitution.* (Published originally in 1833. Cooley's 4th and Bigelow's 5th editions are the best. 2 vols., Boston, 1873, 1891.) — Still an excellent commentary on the constitution; lucid, clear, prophetic.

SUTHERLAND, WILLIAM ANGUS. *Notes on the Constitution of the United States.* (San Francisco, 1904.) — Recent, good, and full on pending problems.

TIFFANY, JOEL. *A Treatise on Government, and Constitutional Law: being an Inquiry into the Source and Limitation of Governmental Authority, according to the American Theory.* (Albany, 1867.) — Rather theoretical.

TUCKER, JOHN RANDOLPH. *The Constitution of the United States: a Critical Discussion of its Genesis, Development, and Interpretation.* (2 vols., Chicago, 1899.) — By a southern publicist; an extensive and thoughtful work.

WHARTON, FRANCIS. *Commentaries on Law embracing Chapters on the Nature, the Source, and the History of Law; on International Law, Public and Private; and on Constitutional and Statutory Law.* (Philadelphia, 1884.) — Excellent in scope; much on state systems; not much quoted by lawyers, but full of suggestive examples.

WILLOUGHBY, WESTEL WOODBURY. *The American Constitutional System.* (*American State Series*, N. Y., 1904.) Brief and suggestive.

V. American Discussions of Actual Government.

Besides the works which aim to give some complete picture of American government or of the federal constitutional system, many useful books take up phases of the system, or discuss the main underlying principles, or criticise the system as a whole. Some of these books are collections of essays, and among the most useful may be mentioned the following: —

BAKER, JOHN FREEMAN. *The Federal Constitution: An Essay.* (N. Y., etc., 1887.) — A capital, though very brief discussion of the national government by a good critical observer.

BALDWIN, SIMEON EBEN. *Modern Political Institutions.* (Boston, 1898.)—Various questions of jurisprudence and government, with a valuable discussion of state constitutions.

Bradford, Gamaliel. *The Lesson of Popular Government.* (2 vols., N. Y., 1899.) — A criticism of American government, national, state, and municipal. Very argumentative and prejudiced, especially against the committee system.

Brownson, Orestes Augustus. *The American Republic; its Constitution, Tendencies, and Destiny.* (N. Y., 1866.) — An interesting discussion of the nature of government in general, and especially of the character of American democracy. Thoughtful and suggestive.

Cleveland, Frederick Albert. *Growth of Democracy in the United States; or, the Evolution of Popular Co-operation in Government and its results.* (Chicago, 1898.) — A searching and learned discourse on democracy and its effects on law and legislation.

Crooker, Joseph Henry. *Problems in American Society: some Social Studies.* (Boston, 1889.) — Suggestive essays on charities, temperance, education, and religion, with bibliographies.

Draper, John William. *Thoughts on the Future Civil Policy of America.* (N. Y., 1865.) — Suggestive rather than learned.

Eliot, Charles William. *American Contributions to Civilization, and other Essays and Addresses.* (N. Y., 1897.) — In large part a discussion of the principles and workings of American democracy, written in an interesting style by a man of great experience who believes in democracy.

Follett, Mary Parker. *The Speaker of the House of Representatives.* (N. Y., 1896.) — A book much extolled by ex-speakers and other public men, as one of the most clear-sighted discussions of the legislative side of the federal government.

Ford, Henry Jones. *The Rise and Growth of American Politics: A Sketch of Constitutional Development.* (N. Y., 1898.) — A serviceable work, chiefly on party and popular government.

Giddings, Franklin Henry. *Democracy and Empire, with Studies of their Psychological, Economic, and Moral Foundations.* (N. Y., 1900.) — A series of essays on the relations of society to government, and especially to the government of dependencies. A strong and thoughtful book.

Godkin, Edwin Lawrence. *Problems of Modern Democracy; Political and Economic Essays.* (N. Y., 1896.) — Essentially a discussion of popular government and its political machinery, by a keen, incisive pessimist.

Goodnow, Frank Johnson. *Politics and Administration: A Study in Government.* (N. Y., 1900.) — Devoted to showing the divergence of the actual from the formal system of government. Written by one of the most inspiring of American publicists.

Hadley, Arthur Twining. *The Education of the American Citizen.* (N. Y., 1901.) — Chiefly on the need of training public opinion.

Harrison, Jonathan Baxter. *Certain Dangerous Tendencies in American Life, and other Essays.* (Boston, 1880.) — The first essay is a valuable discussion of the dangers of popular government in America.

Hart, Albert Bushnell. *Practical Essays on American Government.* (N. Y., 1893.) — On various phases of national and local government, with especial reference to practice.

Hildreth, Richard. *Theory of Politics: An Inquiry into the Foundations of Governments, and the Causes and Progress of Political Revolutions.* (N. Y., 1853.) — An old-fashioned discussion of the nature of government in general, with small reference to the United States.

Hurd, John Codman. *The Union State: A Letter to our States-rights Friend.* (N. Y., 1890.) — A brief description of the nature of the constitution, as shown by historical evidence.

Jennings, Louis John. *Eighty Years of Republican Government in the United States.* (N. Y., 1868.) — One of the earliest attempts to treat American government as an organism.

Kelly, Edmond. *Government, or Human Evolution.* (2 vols., N. Y., 1900–1901.) — A philosophical discussion of the social bases of Democratic government.

Lieber, Francis. *Legal and Political Hermeneutics: or, Principles of Interpretation and Construction in Law and Politics, with Remarks on Precedents and Authorities.* (Enlarged edition. Boston, 1839.) — A suggestive though somewhat discursive book.

Lodge, Henry Cabot. *Historical and Political Essays.* (Boston, etc., 1892.) — Interesting discussions of political and parliamentary methods, by a public man.

Lowell, Abbott Lawrence. *Essays on Government.* (Boston, etc., 1889.) — A very suggestive book, especially in the discussion of cabinet *versus* congressional government.

MULFORD, ELISHA. *The Nation: the Foundations of Civil Order and Political Life in the United States.* (N. Y., 1871.) — A philosophical and didactic statement of the theory of national union and sovereignty.

ROOSEVELT, THEODORE. *Essays on Practical Politics.* (N. Y., etc., 1888.) — *American Ideals and other Essays, Social and Political.* (N. Y., 1897.) — *The Strenuous Life: Essays and Addresses.* (N. Y., 1900.) — Of these three volumes, part of the *Practical Politics* is reprinted in *American Ideals.* They include one of the best inside surveys of state and local politics available to students.

SEAMAN, EZRA C. *The American System of Government: its Character and Workings, its Defects, Outside Party Machinery, and Influences, and the Prosperity of the People under its Protection.* (N. Y., 1870.) — One of the earliest books to describe the actual workings of government; abounds in suggestions of possible reforms.

STICKNEY, ALBERT. *A True Republic.* (N. Y., 1879.) — *Democratic Government: A Study of Politics.* (N. Y., 1885.) — *The Political Problem.* (N. Y., 1890.) — Suggestive studies of the defects of American government, and possible remedies.

TIEDEMAN, CHRISTOPHER GUSTAVUS. *The Unwritten Constitution of the United States: A Philosophical Inquiry into the Fundamentals of American Constitutional Law.* (N. Y., 1890.) — A very handy and intelligent book on actual federal practice, particularly with regard to personal rights.

WILSON, WOODROW. *Congressional Government: A Study in American Politics.* (Boston, 1885.) — A criticism of the American "congressional" or "committee" system, as compared with the responsible cabinet system. Suggestive, though now supplemented by later studies.

WOODBURN, JAMES A. *The American Republic and its Government.* (N. Y., 1904.) — Many apt illustrations of practice.

VI. Foreign Discussions of American Government.

The foreign criticisms of American government during the last half century have been in the main kindly. Besides the treatises of Bryce, Carlier, De Tocqueville, and Von Holst, which are described above, the following may be mentioned: —

Borgeaud, Charles. *The Rise of Modern Democracy in Old and New England.* (Translated by Mrs. Birkbeck Hill. London, etc., 1894.) — A very original and interesting account of the beginnings of the American system.

Boutmy, Émile. *Studies in Constitutional Law: France — England — United States.* (Translated by E. M. Dicey. London, 1891.)

Dicey, Albert Venn. *Introduction to the Study of the Law of the [British] Constitution.* (5th ed. London, 1891.)

Gladstone, William Ewart. *Kin Beyond Sea.* (Reprinted, from *North American Review*, CXXVII, 179–212, in *Gleanings of Past Years*, I, ch. viii. London, 1879.)

Lecky, William Edward Hartpole. *Democracy and Liberty.* (2 vols., N. Y., 1896.) — Pessimistic.

Maine, Sir Henry Sumner. *Popular Government: Four Essays.* (N. Y., 1886.) — A wrong-headed book, having little knowledge of the actual nature of the American system.

Ostrogorski, M. *Democracy and the Organization of Political Parties.* (2 vols. Translated by Frederick Clarke. N. Y., 1902.)

VII. Valuable Books on Special Topics.

Most of the works here mentioned are cited below in the chapter bibliographies; the titles are placed here as a help to the verification of references, and as a guide to the librarian in ordering books.

Adams, Henry Carter. *Public Debts: An Essay in the Science of Finance.* (N. Y., 1887.)

Ames, Herman Vandenburg. *The Proposed Amendments to the Constitution of the United States during the First Century of its History.* (American Historical Association, *Annual Report for 1896*, Vol. II.)

Bullock, Charles Jesse. *The Finances of the United States from 1775 to 1789, with especial Reference to the Budget.* (Madison, 1895; University of Wisconsin, *Bulletin*, *Economics, Political Science and History Series*, Vol. I, No. 2.)

Carson, Hampton Lawrence. *The Supreme Court of the United States: its History.* (2 vols., Philadelphia, 1892.)

CHANNING, EDWARD. *Town and County Government in the English Colonies of North America.* (Baltimore, 1884; Johns Hopkins University, *Studies in Historical and Political Science*, Series II, No. 10.)

COLER, BIRD SIM. *Municipal Government, as illustrated by the Charter, Finances, and Public Charities of New York.* (N. Y., 1900.)

COMMONS, JOHN ROGERS. *Proportional Representation.* (N. Y., 1896.) — *Races and Immigrants in America.* (N. Y., 1907.)

CONKLING, ALFRED RONALD. *City Government in the United States, with a chapter on the Greater New York Charter of 1897.* (4th ed. N. Y., 1899.)

DALLINGER, FREDERICK WILLIAM. *Nominations for Elective Office in the United States.* (*Harvard Historical Studies*, No. 4. N. Y., 1897.)

DEWEY, DAVIS RICH. *Financial History of the United States.* (*American Citizen Series.* N. Y., 1903.)

DOUGHERTY, J. HAMPDEN. *The Electoral System of the United States.* (N. Y., 1906.)

EATON, DORMAN BRIDGMAN. *The Government of Municipalities.* (N. Y., 1899.)

ELLIOTT, CHARLES BURKE. *The Principles of the Law of Public Corporations.* (Chicago, 1898.)

ELY, RICHARD THEODORE. *Taxation in American States and Cities.* (N. Y., 1888.)

FAIRLIE, JOHN ARCHIBALD. *Local Governments in Counties, Towns and Villages.* (*American State Series.* N. Y., 1906.) *Municipal Administration.* (N. Y., 1901.) — *The National Administration.* (N. Y., 1905.)

FARRAND, MAX. *The Legislation of Congress for the Government of the Organized Territories of the United States, 1789–1895.* (Newark, N. J., 1896.)

FISH, CARL RUSSELL. *The Civil Service and the Patronage.* (*Harvard Historical Studies*, No. 11. N. Y., 1905.)

GOODNOW, FRANK JOHNSON. *City Government in the United States.* (*American State Series.* N. Y., 1904.) — *Municipal Home Rule: A Study in Administration.* (N. Y., 1895.) — *Municipal Problems.* (N. Y., 1897.)

Goss, John Dean. *The History of the Tariff Administration in the United States, from Colonial Times to the McKinley Administration Bill.* (N. Y., 1891; Columbia University, *Studies in History, Economic, and Public Law*, Vol. I, No. 2.)

Haines, Henry S. *Restrictive Railway Legislation.* (N. Y., 1906.)

Hall, Prescott F. *Immigration and its Effects upon the United States.* (N. Y., 1906.)

Howard, George Elliott. *An Introduction to the Local Constitutional History of the United States.* (Vol. I; Baltimore, 1889; no more published.)

Jameson, John Alexander. *A Treatise on Constitutional Conventions: their History, Powers, and Modes of Proceeding.* (4th ed. Chicago, 1887.)

Jameson, John Franklin. *Essays in the Constitutional History of the United States in the Formative Period, 1775–1789.* (Boston, etc., 1889.) — *An Introduction to the Study of the Constitutional and Political History of the States.* (Baltimore, 1886. Johns Hopkins University, *Studies in Historical and Political Science*, IV, No. 5.)

Kerr, Clara Hannah. *The Origin and Development of the United States Senate.* (Ithaca, N. Y., 1895.)

McConachie, Lauros G. *Congressional Committees: A Study of the Origins and Development of our National and Local Legislative Methods.* (N. Y., 1898.)

Macy, Jesse. *Political Parties in the United States, 1846–1861.* (N. Y., 1900.) — *Party Organization.* (*American State Series.* N. Y., 1904.)

Merriam, C. Edward. *History of American Political Theories.* (N. Y., 1903.)

Mason, Edward Campbell. *The Veto Power: its Origin, Development, and Function in the Government of the United States, 1789–1889.* (Boston, 1890.)

Mayo-Smith, Richmond. *Emigration and Immigration: A Study in Social Science.* (N. Y., 1890.)

Münsterberg, Hugo. *The Americans.* (Translated by Holt. N. Y., 1905.)

Myer, Balthasar Henry. *Railway Legislation in the United States.* (N. Y., 1903.)

MYERS, GUSTAVUS. *The History of Tammany Hall.* (N. Y., 1901.)

RANDOLPH, CARMAN FITZ. *The Law and Policy of Annexation, with special reference to the Philippines; together with Observations on the Status of Cuba.* (N. Y., 1901.)

REINSCH, PAUL S. *American Legislatures and Legislative Methods.* (*American State Series.* N. Y., 1907.)

SALMON, LUCY MAYNARD. *History of the Appointing Power of the President.* (N. Y., etc., 1886; American Historical Association, *Papers*, Vol. I, No. 5.) — A new edition is in preparation.

SATO, SHOSUKE. *History of the Land Question in the United States.* (Baltimore, 1886; Johns Hopkins University, *Studies in Historical and Political Science*, IV, Nos. 7–9.)

SHAW, ALBERT. *Political Problems of American Development.* (N. Y., 1907.) — Thoughtful discussion of the principal problems now awaiting adjustment.

STANWOOD, EDWARD. *American Tariff Controversies in the Nineteenth Century.* (2 vols., 1903.)

TAUSSIG, FRANK WILLIAM. *The Tariff History of the United States: A Series of Essays.* (4th ed. N. Y., etc., 1898.)

WENDELL, BARRETT. *Liberty, Union, and Democracy.* (N. Y., 1906.) — A brilliant characterization of American traits.

WILCOX, DELOS FRANKLIN. *The American City: a Problem in Democracy.* (The Citizen's Library. N. Y., 1904.) — *The Study of City Government: An Outline of the Problems of Municipal Functions, Control, and Organization.* (N. Y., 1897.)

WILLOUGHBY, WESTEL WOODBURY. *The Supreme Court of the United States: its History and Influence in our Constitutional System.* (Baltimore, 1890.)

WILLOUGHBY, WILLIAM FRANKLIN. *Territories and Dependencies of the United States, their Government and Administration.* (*American State Series.* N. Y., 1905.)

VIII. Periodicals containing Materials on American Government.

Annals of the American Academy of Political and Social Science. (Philadelphia, 1890–. 30 vols. to 1907.) — Especially interested in government.

American Historical Review. (N. Y., 1895–. 13 vols. to 1907.)

American Law Review. (Boston and St. Louis, 1866–. 41 vols. to 1907.)

American Political Science Review. (Baltimore, 1906–.) Very serviceable to the subject.

Appleton's Annual Cyclopædia and Register of Important Events, 1861–1902. (42 vols., N. Y., 1862–1902.) — Called the *American Annual Cyclopædia* until 1875.

Atlantic Monthly. (Boston, 1857–. 100 vols. to 1907.) — Very many articles on actual government, by experienced public men.

Chatauquan. (Meadville, Pa., and Cleveland, 1880–. 48 vols. to 1907.

Current History and Modern Culture. (12 vols., Detroit, Buffalo, Boston, and N. Y., 1891–1903.) — Formerly *Quarterly Register of Current History* and *Cyclopedic Review of Current History.*

Forum. (N. Y., 1886–. 34 vols. to 1907.) — Many discussions by public men.

Good Government. (Boston, Washington, and N. Y., 1881–. 24 vols. to 1907.) — Until 1892 called the *Civil Service Record,* and published at Boston.

Green Bag. (Boston, 1889–. 19 vols. to 1907.)

Harvard Law Review. (Cambridge, 1887–. 21 vols. to 1907.)

Independent. (N. Y., 1848–. 63 vols. to 1907.) — Since 1898 issued as a magazine.

Journal of Political Economy. (Chicago, 1892–. 15 vols. to 1907.)

Municipal Affairs. (6 vols., N. Y., 1897–1902.) — The best periodical on municipal government; unfortunately discontinued.

Nation. (N. Y., 1865–. 85 vols. to 1907.) — Invaluable for its views and its comments on public affairs, but very pessimistic.

Niles' Weekly Register and *Niles' National Register.* (Baltimore, 1811–1848. 73 vols.) — Indispensable on its period.

North American Review. (Boston and N. Y., 1815–. 186 vols. to 1907.) — A repository of great value.

Outlook. (N. Y., 1867–. 87 vols. to 1907.) — Until July 1, 1893, called the *Church Union* and the *Christian Union.*

Political Science Quarterly. (Boston, 1886–. 22 vols. to 1907.) — A thorough and well-edited American periodical.

Public Opinion. (Washington and N. Y., 1886–. 40 vols. to 1907.)

Quarterly Journal of Economics. (Boston, 1886–. 21 vols. to 1907.) — Many governmental questions, well treated.

Statesman's Year Book. (London, 1872–. 44 vols. to 1907.) — Statistical and descriptive.

Yale Review. (New Haven, 1892–. 16 vols. to 1907.) — Now chiefly devoted to questions of government and public law.

IX. Principal Sources in American Government.

The ultimate sources of knowledge on American government are much harder to reach than in history. The final will of the people is expressed in legislative action of many kinds, recorded in many places; such as constitutions, constitutional amendments, treaties, national statutes, state statutes, city ordinances. Executive action is expressed in an enormous mass of messages, vetoes, nominations, executive decisions, votes of administrative boards, and orders to inferior officials. The courts express their findings in decisions, which are printed and digested; and also in decrees, orders, reports, and the like, which may exist only in manuscript records.

The best that can be done here is to indicate a few of the serviceable collections of material. Lists of collections of sources and specific references, both by origin and by topics, may be found in the following works: New England History Teachers' Association, *Historical Sources in Schools* (N. Y., 1902); Channing and Hart, *Guide to the Study of American History* (Boston, 1896); Albert Bushnell Hart, *American History told by Contemporaries* (4 vols., N. Y., 1897–1901), Introduction to each of the volumes; William Eaton Foster, *References to the Constitution* (N. Y., 1890).

Collections.

Abbott, Howard S., editor. *Cases on Public Corporations.* (St. Paul, 1898.)

Ames, Herman V. *State Documents on Federal Relations.* (4 nos., Philadelphia, 1900–1902.)

Boyd, Carl Evans, editor. *Cases on American Constitutional Law.* (Chicago, 1898.) — Practically a selection out of Thayer's cases; a handy single volume.

Caldwell, Howard Walter, editor. *American History Studies.* (3 vols., Chicago, 1897–1900.) — These are brief related extracts.

Hart, Albert Bushnell, editor. *American History told by Contemporaries.* (4 vols. N. Y., 1897–1901.) — A general topical index at the end of the fourth volume leads to many pieces on government in action.

HART, ALBERT BUSHNELL, and CHANNING, EDWARD, editors. *American History Leaflets.* (N. Y., 1892–. 35 numbers to 1908.) — Contain many ordinances, colonial and other statutes, and public correspondence. Purchasable separately for class study.

HILL, MABEL, editor. *Liberty Documents; with Contemporary Exposition and Critical Comments drawn from various Sources.* (N. Y., 1901.) — Both English and American documents on personal liberty; convenient and serviceable.

MCCLAIN, EMLIN, editor. *A Selection of Cases on Constitutional Law.* (Boston, 1900.) — Larger than Boyd, smaller than Thayer; well selected.

MACDONALD, WILLIAM, editor. *Select Charters and other Documents illustrative of American History, 1606–1775.* (N. Y., 1904.) — *Select Documents illustrative of the History of the United States, 1776–1861.* (N. Y., 1898.) — *Select Statutes and other Documents illustrative of the History of the United States, 1861–1898.* (N. Y., 1903.) — Three useful collections of foundation documents.

MEAD, EDWIN DOAK, editor. *Old South Leaflets.* (Boston, 1883–. 173 numbers to 1907.) — To be had separately or in volumes; many good pieces.

RICHARDSON, JAMES DANIEL, editor. *A Compilation of the Messages and Papers of the Presidents, 1789–1897.* (10 vols. Washington, 1896–1899.) — A collection poorly put together, but indispensable for the study of American government.

SMITH, JEREMIAH, editor. *Cases on Selected Topics in the Law of Municipal Corporations.* (Cambridge, Mass., 1898.)

THAYER, JAMES BRADLEY, editor. *Cases on Constitutional Law; with Notes.* (2 vols., Cambridge, Mass., 1895.) — The best collection of constitutional cases, both national and state; selected by a great lawyer.

DEBATES OF PUBLIC DELIBERATIVE BODIES.

The federal debates have for many years been published in full, as follows: —

Annals of Congress, 1789–1824. (42 vols., Washington, 1834–1856.) — *Register of Debates in Congress*, 1824–1837. (29 vols., Washington, 1825–1837.) — *The Congressional Globe: containing*

Sketches of the Debates and Proceedings, 1833–1873. (109 vols., Washington, 1835–1873.) — *Congressional Record*, 1873–. (Washington, 1873–.)

No state publishes verbatim reports of legislative debates; a few cities publish them in official newspaper or like forms; but they are hard to find.

Statutes.

All the states publish their statutes annually or biennially, and from time to time print Revised Statutes, including the laws in force. An annual summary of great service is

New York State Library. *Bulletin, Comparative Summary and Index of State Legislation*, 1890–. (Albany, 1891–.) — *Bulletin, Review of Legislation*, 1901–. (Albany, 1902–.) *Year book of Legislation*. (Albany, 1903–.) Annual publications of great service.

City and other local governments collect and publish their ordinances from time to time, in forms easy to preserve when they first come out.

The federal government publishes its statutes in various forms, chiefly as follows:—

Statutes at large . . . and . . . Treaties, Conventions, Executive Proclamations and the Concurrent Resolutions of the Two Houses of Congress. (33 vols. to 1905. Boston, 1846–1873, Washington, 1875–.) The official collection of federal laws, containing also the treaties.

Treaties and Conventions concluded between the United States of America and other Powers since July 4, 1776. (Washington, 1889.)

Malloy, William M., Compiler. *Compilation of United States Treaties in Force.* (Washington, 1904.)

Revised Statutes . . . embracing the Statutes of the United States, general and permanent in their Nature, in force on the First Day of December, one thousand eight hundred and seventy-three. (2d ed., Washington, 1878.)—*Supplement to the Revised Statutes of the United States, 1874–1901.* (2 vols., Washington, 1891, 1901.)

Judicial and Administrative Decisions.

The reports of the United States Supreme Court, those of the inferior federal courts, and those of the state supreme courts, are published in several forms, both official and unofficial, including condensations; and are made available through many digests. For full titles to federal reports and reprints, and to the digests through which state reports can be reached, see Albert Bushnell Hart, *Manual of American History, Diplomacy, and Government*, § 18.

The opinions of the Attorneys General of the United States, and the decisions of the Interstate Commerce Commission, Court of Claims, Commissioner of Patents, Commissioner of Pensions, and Commissioner of Public Lands, are separately published. Full titles will be found in Albert Bushnell Hart, *Manual*, § 68.

Government Publications.

A vast amount of valuable material is entombed in the printed documents of Congress. These are made more available by several new indexes, especially the following: —

Ames, John Griffith. *Comprehensive Index to the Publications of the United States Government, 1881–1893.* (2 vols., Washington, 1905.)

Greely, Adolphus Washington. *Papers relating to Early Congressional Documents.* (Washington, 1900; *Senate Documents*, 56 Cong., 1 sess., No. 428.)

Poore, Benjamin Perley. *A Descriptive Catalogue of the Government Publications of the United States, 1774–1881.* (Washington, 1885.) — Poorly executed, and now out of date.

United States. *Catalogue of the Public Documents of Congress and of all the Departments of the Government of the United States from March 3, 1893.* (Washington, 1896–. 4 vols. to 1901, covering the period 1893–1899.)

United States. *Tables of, and Annotated Index to, the Congressional Series of United States Public Documents.* (Washington, 1902.) — Part II of a check-list of all the government publications up to 1893.

United States. *Index to the Subjects of the Documents and Reports and to the Committees, Senators and Representatives presenting them.* — Issued for each session of Congress.

The state and local reports are rarely printed in consecutive form, and hence early disappear. There are few files of them anywhere.

Works of Public Men.

The diaries, letters, reminiscences, and state papers of American public men are of great service on government. For lists of the principal public men, their works, and works about them, see Channing and Hart, *Guide*, §§ 25, 32, 33, and A. B. Hart, *Manual*, §§ 27, 236, 237. The diaries of John Adams, William Maclay, and John Quincy Adams, the autobiography of George F. Hoar, and the letters of John and W. T. Sherman, are among the best.

Fugitive Material.

Much of the most valuable information about actual government comes from contact with public men, and from chance news in the daily papers. The Washington correspondents of the great dailies are among the best informed men on this subject. Many newspapers also have correspondents at the state capitals during the sessions of the legislatures. City councils and mayors are the subject of much newspaper discussion.

Actual Government.

Actual Government.

Part I.

Fundamental Ideals.

CHAPTER I.

PHYSICAL BASIS OF GOVERNMENT.

1. References.

BIBLIOGRAPHY: Channing and Hart, *Guide* (1896), §§ 21*a*, 77–80, 110, 130, 145, 148, 180, 204, 213; C. D. Wright, *Practical Sociology* (1900), §§ 9, 17, 23; A. B. Hart, *Manual* (1908), §§ 97, 98. E. C. Semple, *Am. History and its Geographic Conditions*, chapter bibliographies. See also references in chs. xviii, xxiv, below.

BOUNDARIES: H. Gannett, *Boundaries of the U. S. and of the Several States* (U. S. Geological Survey, *Bulletins*, No. 171, 1900); B. A. Hinsdale, *Bounding the Original U. S.* (*Mag. of Western Hist.*, II, 401–423, 1885); W. F. Wilcox, *Report on Boundaries* (U. S. Twelfth Census, *Bulletins*, No. 74, 1901).

PHYSICAL AND POLITICAL MAPS: The best physical maps are published by the Geological Survey of the United States, in various forms, of which the most serviceable are the detailed sheets of most of New England, New Jersey, and other detached sections, and small contour maps. A good wall map is furnished by the Commissioner of Public Lands for 80 cents. Small political maps are found in most of the school histories; in A. B. Hart, *Epoch Maps* (rev. ed., 1899); especially in *The American Nation* series (1903–1907).

GEOGRAPHICAL CHARACTERISTICS: Good sketches in L. Farrand, *Basis of Am. Hist.* (*Am. Nation*, II, 1904), chs. i–iv; A. B. Brigham, *Geographic Influences in Am. Hist.* (1903); E. C. Semple, *Am. Hist. and its Geographic Conditions* (1903); J. D. Whitney, *U. S.*, I (1889), Supplement (1894); B. A. Hinsdale, *How to Study and Teach Hist.* (1894); N. S. Shaler (with collaborators), *U. S.* (2 vols., 1894), I, chs. i–iii; N. S. Shaler, *Nature and Man in America* (1891); R. G. Thwaites, *The Colonies* (10th ed., 1897); *Bulletins* of the Twelfth Census (1900–); many geographical and descriptive articles in *National Geographical Magazine*, and *Bulletin of the Am. Geographical Society*.

The People and their Social Condition: J. Bryce, *Am. Commonwealth* (ed. 1901), II, chs. xci–xciii, part vi; C. D. Wright, *Practical Sociology* (1900), especially chs. ii–iv, vii, viii; E. E. Sparks, *Expansion of the Am. People* (1900); E. L. Godkin, *Problems of Modern Democracy* (1897), chs. ii, viii, x; J. F. Muirhead, *America the Land of Contrasts* (1902); H. Münsterberg, *Americans* (1905), chs. xxi–xxiii; L. Farrand, *Basis of Am. Hist.* (*Am. Nation*, II, 1904), chs. vi–xvii; A. B. Hart, *National Ideals* (*Am. Nation*, XXVI, 1907), ch. x. — Sources: A. B. Hart, *Contemporaries* (1897–1901), II, §§ 80–108; III, §§ 10–36, 151–157; IV, §§ 75–83, 203–209.

Population and Immigration: F. B. Dexter, *Estimates of Population in the Am. Colonies* (1887); recent censuses; R. Mayo-Smith, *Emigration and Immigration* (1890); A. Shaw, *Political Problems* (1907), ch. ii; E. R. A. Seligman, *Economics* (1907), §§ 21–26; E. E. Sparks, *National Development* (*Am. Nation*, XXIII, 1907), ch. ii.

Race Questions: *Am. Race Problems* (Am. Acad. Pol. Sci., *Annals*, XVIII, 7–178, 1901); J. R. Commons, *Races and Immigrants* (1907), ch. iii; P. F. Hall, *Immigration* (1906), ch. xv; W. E. B. DuBois, *Souls of Black Folk* (1903); A. Shaw, *Political Problems* (1907), ch. iii; E. E. Sparks, *National Development* (*Am. Nation*, XXIII, 1907), chs. xiv, xvi; A. B. Hart, *National Ideals* (*Am. Nation*, XXVI, 1907), ch. iv; W. G. Brown, *Lower South* (1902).

2. The Land and its Resources.

The purpose of this book is to account for and to describe the vast organism of American government. Without attempting to define "the state" in general, or to explain the theory of the state, we shall undertake to make clear the nature of that community to which we give the name "the United States," including not only the national authority centred at Washington, but also the governments of the constituent states and their creations, the local governments. The fundamental basis of this study will be the conception that all forms of government, and all functions of government, within the United States, are factors of one great political system, expressed partly in traditional conceptions of democracy, partly in the federal constitution, partly in the state constitutions, partly in the charters or other acts of incorporation of localities, counties, cities, and towns, partly in the statutes of the nation, states, and local governments; quite as much in the habitual practice

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of all the various agencies of the government, as shown by what they actually do.

To understand our country we must know its physical conditions, and especially the territorial basis of national life. Not reckoning our insular possessions and dependencies, the United States occupies a region stretching from the Atlantic Ocean to the Pacific, and from the 49th parallel, north latitude, to the 25th parallel on the south. The area of this continental block is 2,970,230 square miles; Alaska and the insular possessions bring it up to 3,690,822 square miles. This area is divided into four north-to-south belts: first, the Atlantic slope, from the ocean to the Appalachian range, including New England and most of the Middle and South Atlantic states; second, the Mississippi Valley, extending from Western New York to Idaho and Colorado, and practically including the upper Great Lakes; third, the interior basin from the crest of the Rockies to the Sierra Nevadas; fourth, the Pacific slope, chiefly the states of California, Oregon, and Washington.

The Great Basin is lofty, ill watered, and mostly sterile; the two coast regions are well watered, well wooded, and abound in minerals; and the Mississippi Valley is an area of fertile and easily accessible land, hardly equalled in the whole world. From the Atlantic to the Rockies the United States is flanked north, east, and south by tide water or navigable lakes; it has splendid harbors looking eastward; and the mountains westward present no obstacle to the building of railroads, which connect with ports on the Pacific.

In climate and in products the United States is a strong, rich, and abundant land. From the snow-clothed summits of the Sierras to the sub-tropical regions of Florida and the Mississippi delta, the country abounds in food and in materials for clothing and house-building. It is also a country rich in mineral resources. Almost unsurpassed coal fields, vast reservoirs of oil, abundant mines of gold, silver, copper, and lead, unrivalled deposits of iron, — all these natural riches contribute to make the country wealthy, and at the same time

to diversify its interests. In the census of 1900, the annual agricultural products of the whole United States were valued at $4,700,000,000, the manufactures at $8,400,000,000. It is not only a rich but a busy land, full of opportunities.

These natural advantages have had a great effect upon the development of American government. The whole land east of the Rockies is so easily accessible, and the mountains and rivers are so easily passed that, since the French were excluded in 1763, there has been no permanent division of the interior into independent communities. Men have passed back and forth, northward and southward, eastward and westward; and the only attempt that has been made to divide the country — the rebellion of 1861 — failed because geographically and politically there was no natural division into a North and a South. The ease of transportation has led to great rapidity of settlement in wild territory; hence new communities have rapidly sprung up, and the continental states of the Union have in a century increased from seventeen to forty-five. The wealth of the country and the ease of transportation have stimulated the growth of cities, for which a special system of municipal governments has had to be contrived. The foreign commerce of the United States, its favorable position between two oceans, its internal wealth, have given to the national government enormous revenues and great prestige. In natural resources our country is surpassed only by China; in area of compact territory only by Russia; in accumulated wealth by no people. The United States occupies a great territory, fitted by nature to be the home of a great nation.

3. Political Subdivisions.

The United States has a system of political subdivisions more complicated and various than that of most lands; for we have three main units of government, — the federal, the state, and the local, — each of which is subdivided for its own purposes. The most important kind of territory is the states of the Union, with boundaries partly derived from grants and

charters made before the Revolution, and partly from acts of Congress admitting the later states into the Union. In addition, the United States is divided into 9 judicial circuits; the coast of the ocean fronts and the Great Lakes is divided into 120 tariff collection districts; the interior and the coast together are divided into 63 internal-revenue collection districts.

The states are subdivided into counties, varying from 3 in Delaware to 249 in Texas; and into election districts, first for members of Congress, then for the two houses of the state legislature. Within the counties are, in most states, towns or townships and cities (though a city sometimes occupies the whole area of a county, as in the case of Philadelphia). Within the townships are sometimes boroughs or villages, as well as electoral subdivisions. The cities are divided into wards and voting precincts.

All these local boundaries are invariably fixed under authority of the state legislature, and are subject to constant change: counties are frequently subdivided, electoral districts are rearranged, ward lines are redrawn from time to time, as cities grow; hence people have very little interest in, and often very little knowledge of, their own political subdivisions. The city boundaries constantly tend to increase by taking in surrounding country: thus the city of Chicago covers 190 square miles, including large areas of open prairie tilled as farms.

The whole area of the United States not included within state boundaries is also subdivided into a variety of territories and districts, posts, reservations, and dependencies, which will be duly described hereafter.

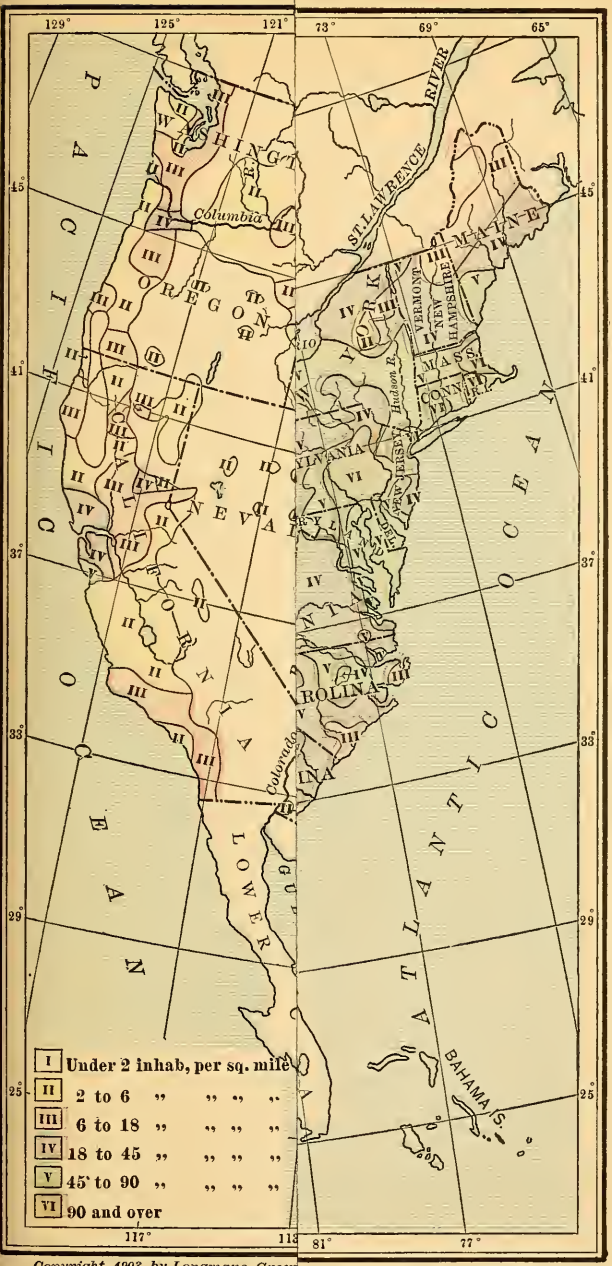
Nor is there any uniformity in these subdivisions. In France every department is divided into cantons, and every canton into communes; in the United States each state sets up its own local system. Nearly all of us live in an electoral precinct; a judicial district; a representative, a senatorial, and a congressional district; a town, a township, or a city; a county; and a collection district; each of which has its special officers and its special purpose.

4. Population and Distribution.

Upon the face of the land, and within the territorial subdivisions just described, live in 1903 about 80,000,000 people, which is about fifteen times as many as in 1803. In 1790 our population was 4,000,000, and it has doubled, or nearly doubled, every twenty-five years since: thus in 1815 the population was about 8,000,000; in 1840, over 16,000,000; in 1865, well over 32,000,000; in 1890 for the first time it showed a slower growth, being about 62,500,000 instead of 64,000,000; in 1900 the official count was 76,303,387 (including Hawaii and Alaska, but not the other insular possessions). This makes the United States fourth in population of world-states, next to China, Russia, and Great Britain; or, leaving colonies out of account, it is third; and it is easily first in its power to produce intelligent and educated men and to call upon them in time of need; so that it is becoming the most powerful nation in the modern world.

An examination of the map opposite, however, will show how unequally this population is distributed. Great areas in the West have less than two inhabitants to the square mile, while some sections in the heart of cities are as crowded as East London or Canton. The areas of thick population and of the richest and most prosperous cities are on the North Atlantic coast (from Portland, Maine, to Washington), through Central New York and the Valley of the Ohio, in the Northern Mississippi Valley, and about the Great Lakes.

The distribution of population is much affected by concentration into cities. In 1900, 25,000,000, or nearly one third of the population, lived in the 546 cities. To be sure, the rural population is also increasing: the 50,000,000 rural dwellers in 1900 are as many as the whole population, urban and rural, in 1880; but there are large areas, especially in New England, where the country towns have decayed and the former homes of prosperous families are left to go to ruin. This is a sign not of loss, but of gain, an evidence that the people have found



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DISTRIBUTION OF THE POPULATION OF THE UNITED STATES. 1900

[Reproduced from Report, of Twelfth U.S. Census.]

better conditions in the neighboring cities or in far-off country homes.

The largest aggregation of city population in 1900 was Greater New York, with 3,437,202 people; then followed, in the order of the number of people, Chicago, Philadelphia, St. Louis, Boston, Baltimore, Cleveland, Buffalo, San Francisco, Cincinnati, Pittsburg. The city of New York has in it about as many people as the whole country west of the watershed of the Rocky Mountains; and fourteen of the states of the Union have each fewer people than live in the city of Cleveland. The effect of city growth has been to disturb the balance of government within states possessing great centres: in New York, Massachusetts, Maryland, Illinois, Missouri, Louisiana, and Ohio there is a difference of interest between the urban and the rural parts of the state, and the country members of the legislatures constantly attempt to govern the cities.

An important element in the distribution of population is the movement from state to state: 14,000,000 people, or nearly one fifth of the nation, were not born in the state or territory in which they live; probably one third of the adult population has moved at least once from a state into another state. Thus, in Oklahoma only 15,000 out of the 100,000 of the whole population were born in the territory; and even in an old and settled region like Iowa, about a quarter of the people have come from other states. This shifting about has carried principles of government from one part of the country to another; but at the same time it has prevented the growth of a deep-seated feeling of attachment to one particular state, and of responsibility for its future.

5. Race Elements.

No great modern country has been so much affected by the coming-in of foreigners as the United States. In 1900 about 10,500,000 of its residents were born outside of the country: of these nearly 3,000,000 were from Germany or other Ger-man-

speaking countries; about 1,800,000 were Irish born; England, Scotland, and Canada furnished a total of 1,800,000; Norway, Sweden, and Denmark, about 1,000,000; Slavs of various origin, about 1,200,000; France, Italy, and Mexico together, about 700,000. In forty years the number of Irish-born Americans has been stationary, the Germans have more than doubled, and great numbers of Latin and Slav immigrants have come in from countries unrepresented in 1860.

These race elements are erratically distributed. The Irish and Slavs prefer the cities, the Germans and Scandinavians the open country. Some sections of the United States have almost no immigrants: thus, in the Southern states, leaving out Texas and Missouri, there are only about 400,000 foreigners, — less than are to be found in the single city of Chicago. These foreigners have furnished laborers and workmen for the farm, for railroad-building, and for the factory, and they have greatly contributed to the building up of the great Northern cities.

In addition to the 10,500,000 immigrants, nearly 16,000,000 of our countrymen are born of a foreign-born father or mother or both parents; so that of the 75,000,000 Americans, 26,000,000 are chiefly of foreign origin, 9,000,000 are negroes, and only about 40,000,000 are of what may be termed an American stock. Hardly in the history of mankind has a great country received such an influx of mixed population from without; and the present prosperity of the republic is proof that this foreign element upon the whole is safe, and that in the course of time most of the descendants of foreigners will be absorbed into the body politic.

The negro population of 9,000,000 includes nearly every person who has any discoverable admixture of negro blood, even to the thirty-second degree. That population has a large birth-rate, but also a large death-rate, and hence increases at a ratio a little less than that of the neighboring white population. The negro population is not altogether confined to the Southern states: there are about 400,000 in the states from

Maine to Pennsylvania, and 500,000 in the states from Ohio to the Dakotas. In two of the states in the Union, Mississippi and South Carolina, the negroes are in excess of the white population; and in Alabama, Georgia, and Florida they are nearly equal. In general the negro population tends to concentrate in the counties in which there is already the largest number of negroes, and the white population to move slowly into other parts of the same state.

6. American Society.

The final measure of national power is not numbers, or diversity of elements, but the character of the people. Are the Americans a people who have that sense of common interest, common standards, and common destiny which makes a strong and enduring race?

The most obvious and the most important social principle in America is equality of opportunity, — the right of every man and woman to do what he is by nature best fitted to do, and the corresponding right of every child to have such a degree of education as will give him the opportunity to show capacity for service to his kind. Hence, in a society which includes race and social elements of great diversity, which runs up the scale from poverty to unmeasured wealth, from the ignorance of the rudest peasant to the polish of the finest modern gentleman, there is always present the democratic idea that wealth, education, and distinction may come to that man who, whatever his beginnings, shows the power to make something of himself.

In government, as in business, the beginner in America looks all along the road to the highest place. A larger part of the population is trained by some experience of government than probably in any other country, except perhaps Switzerland. Offices small and great abound, and are commonly held for short terms; most adult men have personal contact with the various forms of their government. Furthermore, politics are much affected by the great numbers and the physical

power of the American people: it lies in the genius of the Americans to undertake great tasks; they like to build transcontinental railroads and Isthmian canals; they like to establish land offices and Philippine commissions, expecting that they must succeed; with confidence they organize immense municipalities and great national services. The variety of race elements undoubtedly leads to combinations of small groups: in many parts of the country, politicians carefully cultivate the German vote, the Irish vote, the Scandinavian vote. To carry on a hotly contested election campaign in Wisconsin, political speakers must be provided with no less than fifteen languages if they are to reach all the voters; but it seems unlikely that these racial groups will long remain an element in American politics.

American society is in a state of constant change. In few communities do the children live in the house in which their fathers were born; people freely alter their calling, their street, their town of residence, their state: few communities have historical associations with the past. Hence Americans are always ready to take up experiments in government, and as ready to abandon a system which does not work to their minds. To a Frenchman it would seem impossible that in twenty years a city could have three charters; or to a German that a state should five times completely revise its constitution in a century. Yet within this flexible and changeful system of government there is a remarkable conservative instinct, which makes great changes in American government very slow: for instance, after the Civil War, the New England town system was introduced into some of the Southern states; it simply died out for lack of soil in which to grow. Hence also the strong hold upon Americans of unwritten practices of government, — as, for instance, the widespread principle that a representative must live in the district which he represents. In general, American society with its democracy, its rapid movement, its eagerness to improve, and yet its strong hold upon the past, is well suited to the institutions which it has

worked out. We shall find that American government is changeful and yet stable, elastic and yet firm; and that respect for tradition and precedent and vested rights play almost as great a part in America as in such rigid and conservative governments as England.

CHAPTER II.

THE INDIVIDUAL AND HIS PERSONAL RIGHTS.

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8. The Citizen and the Alien.

In a nation, the individual is not simply a social factor; he is or may be a citizen, a constituent part of the state. Citizenship is simply recognized local membership in a political community, and carries with it great privileges and large responsibilities. Citizenship is a privilege which attaches not only to men, but to women and children down to the very youngest: convicts, paupers, insane persons, may be, and usually are, citizens, and as such are entitled to the care and protection of the state. By a statute of 1885, every woman married to a citizen of the United States is deemed a citizen. Citizens may or may not be voters, — only about one fifth of them have the right of suffrage; they may or may not be subject to military service; but the weakest and the strongest, man, woman, and child, are equal in their inborn or acquired right to liberty, to justice, and to protection. For many purposes, such as holding and transferring property, suing and being sued, corporations are technically citizens.

To the Roman in his day, or to primitive man, such as the American Indian, every person not in formal relations of friendship was a personal and natural enemy; but the growth of international trade, the visits of mariners, and the residence of merchants in foreign countries, throughout the civilized world cause the alien foreigner to receive large privilege of movement and of occupation. Any foreigner of good character, able to care for himself, is freely admitted into the United States, and the sea-board states have no right to prevent his coming. In 1900 there were in the country about 2,000,000 alien adult men, and probably as many women, who had not acquired citizenship. The United States government possesses power to expel aliens; but the only general statute ever passed for that purpose, the Alien Friends Act of 1798, was never put into execution.

The alien may sue in the state and national courts; he is entitled to appeal to the government for the protection of his life

and property, to jury trial, and to many like privileges; under the Homestead Act of 1862, Congress has given millions of acres of land to aliens; in eleven states of the Union, an alien may under some circumstances vote, and even hold office; and by practice and a succession of treaties, most of them are also entitled to liberty of conscience and worship, and may move about and trade at their will; the only widespread restriction is against alien holdings of real estate. Socially and practically, no distinction is made between the foreigner who has never acquired United States citizenship, the naturalized foreigner, and the native-born citizen.

A double citizenship arises out of the federal character of the government. In 1857, in the famous Dred Scott case, four judges affirmed that a person of African descent could not become a citizen of the United States, or a citizen of a state, in the sense of the constitution of the United States. This doctrine was one of the main reasons for the passing of the Fourteenth Amendment in 1868, which provides that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside." This does not necessarily cover persons born in the organized territories, or born of American parents abroad, or minor children of unnaturalized foreigners. Thus, every citizen of the United States becomes a citizen of a state while residing in it; but the states may confer all the *privileges* of state citizenship within their limits upon foreigners who have not yet become citizens of the United States.

9. Acquirement and Loss of Citizenship.

Membership in the community is acquired either by birth, by naturalization, or by annexation. In the practice of modern nations, one of two rules is usually followed: by the *jus sanguinis*, the children of citizens born abroad are thereby born citizens of the home country; by the *jus soli*, all persons born within a country are citizens, no matter what the nationality of the parents.

(1) While we adhere in general to the English doctrine of the *jus soli* for the children of aliens born in the United States, we claim for the children of Americans born abroad the *jus sanguinis*. Nevertheless, the children of Americans residing abroad are often claimed by the foreign governments because born on their soil; and hence such young people sometimes come to America to spend a few years about the time of their majority, in order to affirm their American citizenship.

(2) The doubtful cases of citizenship almost all come from naturalization, which is the process of transferring personal allegiance and political membership from one nation to another. In colonial times and under the Confederation, such transfers from foreign countries to the colonies, or from one colony or state to another, were frequent; and each community decided for itself upon the methods and limitations of admission. The federal constitution of 1787 gave to the federal government the sole right to fix conditions of naturalization, and successive statutes have laid down the method and terms of citizenship.

The period of minimum residence since 1795 has been five years (except from 1798 to 1802, when it was fourteen years). No matter how long a man has been in the country, he must formally file a "declaration of intention" at least two years before naturalization; he must then prove by two witnesses that he has resided in the United States five years, is a man of good moral character, not an anarchist, and is attached to the constitution; and he must by oath renounce his allegiance to his former country. His naturalization includes his wife and minor children. These formalities are easy, perhaps too easy, of fulfilment; although Congress defines the method, any federal or state court may receive the proof and issue the certificate, and little pains is taken to verify the evidence.

Naturalization is not the right of all races: no alien Mongolian, especially no Chinese, can be naturalized in the United States; and no member of our own Indian tribes can get citizenship by naturalization, though he may by leaving the tribe.

The naturalized citizen, so long as he remains in America,

is not likely to have any relations with his former government; but thousands return to their country of origin to visit their friends, or on business. Until 1870 Great Britain always claimed such persons as still her subjects; and when in the sixties the German system of enforced military service began, young men who had avoided that service and returned years afterwards with certificates of American naturalization were seized and punished for neglect of military duty. This difficulty led to a series of treaties, negotiated about 1868, under which the German governments agreed that if a German should be absent from his native country five years without showing an intention to return, he should thereby lose his German citizenship; if he afterwards returned to Germany and remained there two years, the American government agreed that he should thereby forfeit his newly acquired American citizenship. Both countries thus formally acknowledge the right of a man to change his membership not only once but twice; and admit that a man may forfeit his citizenship by residence abroad without plain intention of returning. The same principle has been stated in treaties with many other countries.

A curious class called "heimathlosen," or "homeless ones," have lost the citizenship of one country without acquiring that of another: thus the German who has lived in the United States five years without being naturalized loses his German citizenship, yet does not become an American; hence in the United States or Germany or elsewhere in the world he is not entitled to ask for special protection from any power.

(3) The third method by which citizenship may be acquired is the annexation of the country in which the foreigner resides: thus, when Louisiana and Florida came into the Union, it was provided by treaty that the inhabitants of the territory should be admitted as soon as possible to all the rights and advantages and immunities of citizens of the United States. Under a similar clause, persons who were citizens of New Mexico and California in 1848 became citizens of the United States through the transfer; and thus the Zuni and other tribes of

Indians, by an exception to our usual practice, became, and their descendants remain, full citizens of the United States. By the treaty of 1899 for the cession of Porto Rico and the Philippines, the question of citizenship was left for settlement by act of Congress; and Congress has not seen fit to incorporate the people of those dependencies into full American citizenship. They have in that respect much the status of the American Indians.

In some foreign countries there is a system called the civil death, by which a person convicted of a serious crime loses his citizenship and thus can no longer hold property or act as a member of the community; and many foreign countries banish their own citizens. Absolute loss of citizenship as a penalty for crime does not prevail anywhere in the United States, and it is doubtful whether any state can legally expel one of its citizens. The only recorded case of banishment of a citizen by the United States was the sending of C. L. Vallandigham across the border into the Confederacy during the Civil War; and that was justified at the time only as a military measure.

10. Privileges and Obligations of Citizenship.

In many respects the alien has the same duties and the same rights as the citizen: he must obey the laws and pay taxes; but all his privileges he holds subject to ejection. The citizen's rights, on the other hand, are based on long tradition amounting almost to an indefeasible right, on solemn limitations in the federal and state constitutions, and on federal and state statutes.

(1) A great privilege is that of protection: no individual may take the property or injure the person of a citizen without a criminal responsibility; both the federal government and the states are by the federal constitution forbidden to deprive any person of life, liberty, or property without due process of law; even under due process of law, governments may take property for public purposes only on just compensation. This protection follows the citizen upon the high seas and into foreign

countries. An American abroad is subject to the laws of the country to which he goes, and he may be expelled from a foreign country exactly as the alien in the United States; but while he remains he has, by the ordinary principles of international law and by numerous treaties made in his behalf, the right to move about and carry on trade; and he is entitled to the same treatment by foreign courts as is the foreigner in ours. Americans have also acquired the right, in most countries throughout the world, to preach religious doctrines, and to convert such natives as their teaching may affect.

(2) The privileges of a citizen at home in America include a share in all that the state does for the individual. The citizen is entitled to an education at the expense of the state; he is entitled to use the public roads, streets, and grounds, and to ride for the legal fare on the street railways, railroads, and passenger steamers; if unable to support himself, the public must keep him from starvation; if he goes insane, he is entitled to the aid of the public asylum: the state exists for him, and he and his fellows are the state.

The obligations of citizenship correspond with the advantages. (1) First, the citizen is held responsible to national, state, and local laws. If he commits crimes or misdemeanors, he must submit to trial, and, if convicted, to punishment; if called upon, he must aid the public authorities in keeping order. (2) Another obligation of consequence is that of military service. Every state may require its adult able-bodied male citizens to serve in the militia for the defence of the state government; and the federal government may call upon any such person to serve in the national army for defence or offence. In the Civil War, thousands of men, both North and South, were chosen by draft to enter the armies. (3) The Civil War distinctly brought out the obligation, if there be any conflict of authority, to obey the national government against a foreign nation or against a city or a state. Although for his share in that contest no person was convicted of treason, nothing can be more certain than that in future collisions

of authority, the federal government will hold responsible with their lives persons who may refuse to obey on the ground that they are directed to the contrary by their state.

(4) Another obligation of many citizens, not enforceable by law, is to take part in the government in public elections. The right to vote is not an incident, but a privilege conferred on some citizens or even aliens. Yet citizens who are not voters, including many minors, can take an intelligent interest in public affairs, and can join in protest against the appropriation of public benefits by a few persons.

(5) Another moral obligation of citizens is to reach their political ends through the peaceful process of choosing men to represent them who will bring about the desired reforms. The punishment of criminals must be intrusted to the courts; the redress of abuses to city councils, legislatures, and Congress. Riots and violence and mobs in behalf of a good cause simply encourage like irregular methods in behalf of a bad cause.

11. History of Anglo-Saxon Liberty.

Citizenship does not necessarily mean freedom: subjects of the czar of Russia or of the sultan are citizens. Even in countries where there is popular participation in government, the individual may be legally subject to forms of arrest, imprisonment, trial, and punishment which seem to us unjust. Men of the English race have a tradition of freedom from arbitrary acts by officers of civil and military government, such as has never been known in the previous history of the world.

The rights of Englishmen are partly traditional: in part they are expressed in a succession of great royal grants and acts of Parliament. In the charter of King Henry I, in 1100, he promised not to lay "an arbitrary mulct of money" upon wrongdoers. King John, in the great Magna Charta of 1215, consents that "a freeman should not be amerced for a small offence, but only according to the degree of the offence"; and that "No freeman shall be taken or imprisoned or disseised, or outlawed, or banished, or any ways destroyed, nor will we

pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny to any man, either justice or right."

These privileges were at first secured, not for Englishmen in general, but for the great nobles who owned the land and who alone could assist in making the laws; but gradually they were extended to the commonalty, and came to include the two mighty principles that a sovereign may be forced by the moral pressure of his people to deny himself arbitrary power; and that a grant made by one sovereign is binding upon his successors. By 1500 the system of jury trials was well established; and during the great struggle with the Stuart kings, from 1604 to 1688, the rights of the individual were stated in the Petition of Right (1628); the Agreement of the People (1649), and other attempted written constitutions of the English Commonwealth; in the Habeas Corpus Act of 1679; and in the Bill of Rights of 1689. The principal rights thus enumerated are the freedom of the individual from arbitrary money exactions, from the quartering of soldiers, from martial law for civilians, from compulsion to go on foreign military service; especially from arrest and confinement without a charge of crime, and from cruel and unusual methods of trial and punishment.

Our colonial forefathers brought over most of these great individual rights, and participated in their extension in England after colonization began; they had also early charters and instructions to governors, under which they enjoyed express freedom from arbitrary executive and judicial power. In the Declaration of Rights and Grievances in 1765, the Stamp Act Congress declared that "his majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain."

Notwithstanding occasional unjudicial trials and cruel punishments, like those of the Quakers, the colonies enjoyed

greater individual freedom than Englishmen at home. When the first state constitutions were framed, from 1776 to 1780, they formulated these accumulated rights: for instance, freedom from arrest except on warrant, the right to be confronted with accusers and witnesses, the freedom of the press, and the exercise of government for the common benefit of the community. The Declaration of Independence in 1776 protested against the quartering of troops, the imposition of taxes without consent of representatives, and the withdrawal of trial by jury. The Ordinance of 1787 guaranteed to the people of the Northwest Territory the right of habeas corpus and of trial by jury, and restated some of the clauses of the Magna Charta. The federal constitution includes clauses for the maintenance of habeas corpus, for the freedom of religion and of speech, for the right to bear arms and to petition, for public trial by an impartial jury, and for freedom from cruel and unusual punishments, from quartering soldiers, and from bills of attainder and ex-post-facto laws.

These fundamental restrictions protect the citizen not only against officers of government, but against the community itself; and they have been enlarged by many state and national constitutional amendments, and by the practice of a century. Thus, the Thirteenth and Fourteenth Amendments absolutely forbid human slavery, and also protect against unlawful deprivation of life, liberty, and property through the action of any state government. These guaranties have spread wherever there are English colonies; they have profoundly affected the practices of other nations of Europe and of America; and to-day the conception of inborn human rights, of which no individual can be deprived, is the foundation of the whole political and social system within the United States of America.

12. Rights of Personal Freedom and Habeas Corpus.

The first of all the rights of the individual is personal freedom; yet it was for centuries studiously violated in America by the system of slavery. From the beginning of colonial

history, Indians were made slaves; in 1619 began the system of negro slavery in Virginia; and throughout the colonial period, and even later, white persons were sold to masters as "indentured servants" for terms of years or for life.

Beginning with Vermont in 1777, many of the commonwealths prohibited slavery within their borders. Congress prohibited slavery in the Northwest Territory in 1787, and in other areas in 1820, 1845, and 1848. January 1, 1863, President Lincoln declared that slavery would no longer be recognized within the lines of the Confederate army; and in December, 1865, the Thirteenth Amendment was added to the constitution, by which "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." When the Philippines were annexed in 1898, slavery existed in the Sulu Islands; but from the moment of cession it ceased, under this provision, to have any legal existence, and any person claiming his freedom there is entitled to the protection of the government.

Some exceptions to this system of universal freedom exist: children are not free, but the authority of their parents is subject to the control of laws, and children are frequently taken by the courts away from the custody of cruel or neglectful parents; insane people may be restrained of their liberty for their own protection and that of the community, and to give them an opportunity for recovery; paupers who require the support of the state are commonly much restricted of their liberty; and convicts are in many ways slaves of the state during their term of confinement, though they should be protected by rigorous laws prescribing humane treatment. In some Southern communities, convicts are hired out in gangs, generally controlled by state officials; and there have been cases in Mississippi in which criminals have been sold for a term of service to farmers who were to have "full and complete power to control and discipline such prisoners." In a few states, the service of vagrants may also be sold for brief

periods to private individuals. Both practices are contrary to the Thirteenth Amendment.

A person physically and mentally capable of taking care of himself, and not under punishment for crime, cannot be compelled to render any personal service or to remain in any particular place; nobody can legally contract to give another person power to restrain him of his liberty.

Personal freedom includes the right to move freely from place to place and from state to state. To this general principle there are some important and increasing exceptions: the states may prevent the coming in of a person who would be dangerous to the health of the community; and paupers are often moved back and forth to the communities from which they originally came, without the consent of the persons concerned. Furthermore, the United States does not recognize the right of natives of dependencies to pass to the main country. Chinese may travel unimpeded from San Francisco to New York, but no Chinaman may travel from the Philippine Islands to San Francisco; and if there should be a considerable movement of the Porto Ricans or the Filipinos to the continent, Congress would probably prevent it by law. In many Southern states, members of the negro race are practically not free to move where they will: in cases where they have attempted to emigrate to the West, their steamers have been stopped and they have been compelled by shotguns to return lest the Southern communities should be deprived of workmen; on the other hand, there are counties in the South in which no negro is allowed to set his foot, on pain of being shot without trial.

One other exception to this principle must be noted, — namely, the right of the state to imprison people who are charged with crime, until they can be brought to trial. To prevent indefinite confinement without a test of guilt, very ancient English statutes, which appear in some form in the laws of all the states, provide that no person shall be arrested except on reasonable suspicion of crime, which must be set forth in a

regular warrant specifying the person and the crime. Until about 1830, a person might also be arrested in any state in the Union if he could not pay his debts; but the system has now nearly disappeared.

When arrested on a proper warrant, in most cases bail will be accepted by the courts; that is, persons supposed to be pecuniarily responsible will agree to forfeit an agreed sum if the prisoner shall not appear in court at the proper time. In case of aggravated crime, or where there is manifest danger that the presumptive criminal will run away, bail is refused, and hence presumably innocent persons may spend months in jail before trial. In some states important witnesses are also detained, for no other fault than that they know something about the case.

Several ancient methods of testing whether a person was confined under a proper charge grew up in England; and in 1679 the English Parliament provided a better remedy in the great Habeas Corpus Act. In effect it provided that any person who thinks that he or another is unjustly imprisoned may represent the facts to a court, which will then issue a writ of habeas corpus, directing whoever may have in custody the person described in the writ to produce such person in open court (unless charged with treason or felony) and state the reason for his detention: thus, the head of an insane asylum may be compelled to bring his patient before the court and show whether he has complied with the legal method of finding out whether the person is insane. The court of review decides whether law can be shown for the arrest and detention. In 1807, President Jefferson tried to hold Bollman and Swartwout on suspicion of complicity in the Burr rebellion; and Chief Justice Marshall set them free, because they had been arrested by the military without proper warrant. Under our federal system, justices of state courts sometimes grant the writ of habeas corpus in cases of arrest by United States officials; and justices of United States courts issue it for state prisoners. These cases of confusion are generally settled by appeal to the Supreme Court of the United States.

Habeas corpus may be suspended in case of civil war or of foreign war; it was so suspended during the Civil War, and nearly thirty thousand persons were arrested without any proper warrant, frequently on mere suspicion. President Lincoln took the responsibility for this suspension, which eventually extended to places very remote from the seat of war; and Congress, in 1863, passed a kind of indemnification act. It is the opinion of most publicists now that habeas corpus cannot be suspended except by act of Congress, and that most of the arbitrary arrests from 1861 to 1865 were unnecessary and harmful to the administration.

13. Rights of Political and Religious Opinion.

Of all the activities of mankind, the only one that is absolutely beyond the control of other men is the inner belief, the conviction that some things are and other things are not. No government and no church has the physical power to discover what people are thinking about; by force of torture men may be compelled to reveal their secrets, but the extremest physical violence will not induce a blind man to *believe* that he has sight. Nevertheless from the dawn of civilization, churches and governments have busied themselves with impalpable beliefs, as though they were physical acts. From the theory that the state or the church, or both combined, have power to punish people for believing in their hearts what the authorities do not believe, our ancestors have come all the long road to the widest freedom of thought ever known to mankind. For it is the principle of American government, expressed both in federal and state constitutions, that every man has the freest liberty to believe what he considers the truth.

American liberty goes further: it includes the right to express opinions in private conversation and in public utterance, so long as one does not undermine the morality of the community or incite other persons to violent actions; and to induce other people to join in the statement of a supposed truth.

By centuries of conflict, our ancestors earned the right to petition public authorities for redress of grievances, including the assembling to discuss common grievances and to formulate a joint statement, — that is, the right of public meeting. In other countries, assemblages are allowed only by favor: in Berlin, for instance, it is contrary to the law for several persons to join in conversation on the streets; and luckless Americans are sometimes arrested for exchanging too long a good-night. In the United States the mass-meeting is recognized as one of the most effective ways of influencing public opinion. Americans habitually send petitions to members of the local, state, and federal governments, and frequently are allowed to attend public hearings of legislative committees or of administrators, in order to present their views.

The liberty of private utterance extends to the press, although the emancipation of the newspaper was slowly accomplished. The Zenger case in New York in 1735 settled the question in the colonies. We have not, as in France, a deposit of a guaranty fund by the proprietors of the paper; here responsibility comes only after publication. We have never had a censorship, except during the Civil War, when attacks on the government were prohibited. The only federal enactment on that subject, the Sedition Act of 1798, proved one of the most short-lived of statutes. Our theory is that of Cromwell: when a critic was arrested, the Protector set him free with the words, "Let him take his notes. If my government is made to stand, it has nothing to fear from paper shot." Some newspapers take scandalous advantage of the liberality of their government by prying into the details of private lives, by unjustified attacks upon the motives of public servants, and by the publication of gross and degrading criminal news; but one of the greatest causes of discontent is removed when people may freely express their opinions and their dissents. It is usually to the interest of the newspapers to expose public wrong-doing, and therefore they are one of the most powerful influences toward upright public service. Any man who slan-

ders another, or by false and malicious libel excites the community, may be punished through the courts.

Freedom of thought includes the inestimable right of religious opinion, one of the most significant achievements of the American people. The right includes the right to express an absence of religious belief so long as it is not blasphemous. Even our Puritan ancestors hanged people for practising an unpopular religion; but the federal constitution obliges the federal government not to make any religious establishment or to fix any religious qualification. Most of the states have asserted the same principle for themselves in their constitutions. The question of the advocacy of such a religious doctrine as polygamy is a very difficult one. In 1887 the United States government formally dissolved the so-called Church of Jesus Christ of Latter Day Saints, and confiscated the church property, on the ground that polygamy was not a religious belief.

14. The Right to Fair Judicial Proceedings.

The object of courts is to apply the laws, and to discover the truth in contested cases. Where criminal acts are charged, or even in civil suits, the courts must have power to compel the attendance of suitors or their counsel and of witnesses, and to make decisions, under which the custody of property or of persons may be transferred. Our whole machinery of justice is intended to give a speedy, fair, public, and unbiassed trial to every person charged with a crime; it is even a presumption that a man is innocent of a crime until he is proved to be guilty.

The federal constitution protects the people against unreasonable search and seizures, and requires specific warrants; and the state constitutions have similar clauses. Tools of trade are usually exempt from legal seizure, and in certain states the homestead cannot be levied on. The detailed provisions in the federal constitution with regard to judicial trials apply only to federal suits. They provide that a man can be tried only on an indictment or a similar charge of guilt; that he must be

tried by a jury in the criminal courts, and also is entitled to a jury in civil suits at common law where the value in controversy shall exceed twenty dollars; that no person can be compelled to witness against himself, or be twice put in jeopardy of life or limb; that he must have speedy and public trial in the district wherein the crime shall have been committed. These provisions are repeated or imitated in most of the state constitutions.

Constitutional clauses do not protect a person against false testimony or a violent judge or a prejudiced jury, but they put in the hands of the innocent person proper means of establishing his innocence. Furthermore, no person can be punished by the United States courts for a crime defined by ex-post-facto law, — that is, a law made after the act was committed; and he cannot be subjected to cruel or unusual punishments. Torture is absolutely excluded from our jurisprudence, either to ascertain evidence, or as punishment.

The publicity of trials, the notice usually taken by the newspapers, and the power of the courts to set aside jury findings which seem contrary to the evidence, make it difficult to convict an innocent person, although they may also make it easy for a guilty man to escape. The great hardship and injustice under our present system is the long postponement of criminal trials; and then the tedious proceedings, often lasting for weeks and months, wearying the jury almost past endurance, and overloading their minds with a mass of evidence on which they cannot discriminate.

The Fourteenth Amendment, which prohibits the taking-away of life, liberty, or property without due process of law, under colour of a state statute, makes it difficult for the states to set up an arbitrary government. Of course no judicial system covers cases of mob violence, in which evidence is discarded and passion becomes judge. Private justice belonged to a ruder age. The mark of civilization is the willingness to leave to orderly judicial proceedings the punishment even of the worst crimes.

15. Rights of Dependent People and Colonists.

At the time the constitution was framed, in most of the states in the Union negroes, whether slaves or free, were politically inferior; they were not entitled to the usual privileges of suffrage or free movement or to the use of the courts. As late as 1857, Chief Justice Taney said that, when the constitution was founded, people held that the negro "had no rights which the white man was bound to respect." The Fourteenth Amendment was inserted into the constitution, in 1868, expressly to remove the discrimination between the races; and the principle was further extended by the Fifteenth Amendment, so that the right of citizens of the United States to vote, "shall not be denied . . . on account of race, color, or previous condition of servitude." So far as the law can put them on an equal basis, the negroes are entitled to exactly the same civil rights as the white man; and they apparently have most of their judicial rights.

Another race under a special dispensation is the Indians, who from the foundation of the colonies have not been considered members of the political community. They are wards of the nation, and so long as they remain with their tribes have only such personal rights as may be conferred upon them by treaty or by act of Congress.

Another class of dependents is the insane, paupers, and orphans, who are wards of the state; they are entitled to and receive special consideration from the state, and special protection through officials.

The most serious question of dependent people has been presented by the recent annexations of island territory to the United States. Have the people outside the boundaries of organized states the same rights under the federal constitution as those within such states? When the territories were first organized, in 1784 and 1787, it seems to have been assumed that the residents had the rights of Americans; as fast as new territory was annexed, it was speedily brought, sometimes by

treaty, sometimes by specific act of Congress, within the clauses of the constitution which provide for personal liberty. The new island possessions, however, have not as yet been distinctly placed under the genius of the constitution. In the Philippine Islands, Congress has not thought fit to apply previous indictment or trial by jury, but has enacted the right to be protected in life, liberty, and property except by due process of law. Apparently, within the jurisdiction of the United States, there may be millions of persons who are not entitled to the constitutional provisions of personal liberty because it is supposed that they are not qualified to enjoy them. But those clauses are not inserted in the constitution simply for the benefit of the weak and defenceless; they are there for the defence of society, and it is more important to the inhabitants of the states than to the dependent peoples themselves that the people in distant possessions should have justice and freedom.

16. Political and Social Rights.

In most states of the Union, about one fifth of the population are voters. Inasmuch as the suffrage practically carries with it the opportunity to be a candidate for office, the wide extension of suffrage confers great privileges by opening up a possibility of distinction.

The only distinct statements on social rights in the federal constitution are the two clauses forbidding the grant of titles of nobility by the United States or by a state. But the principle of American law is that all people are equally entitled to public advantages, such as parks, public libraries, public schools, municipal gas and water privileges; and that they are also entitled to use private agencies established under supervision of the state for common use, such as railroads and other means of transportation, hotels, and places of amusement.

Nearly excluded from social rights are the negroes in the South: from time immemorial the members of that race, free as well as slave, have not been allowed the equal use of public or semi-public resorts. A statute passed by Congress in 1875,

for the protection of negroes in such cases, was disallowed by the Supreme Court. Negroes are admitted to few of the hotels, North as well as South, and frequently are not allowed on Pullman cars. Most of the Southern states provide separate accommodations on trains for negroes and white people, provide separate schools, and forbid the negroes to use the public libraries or to enter other than certain specified parts of theatres. In the North there is usually no objection to any clean and well-disposed person entering a public conveyance or a place of amusement.

When it comes to a question of social intercourse, gentlemen and ladies choose friends and associates for themselves: there can be no system of legislation that compels A to invite B to his house, or to treat him in a friendly manner. The farthest point reached by the law is that the objection of A shall not prevent B from use of public facilities; and the farthest social right that can be claimed, without bringing down the denunciation of the community, is the right of C to invite B and treat him as a friend, whether A would invite him or not.

CHAPTER III.

THE FRAME OF GOVERNMENT.

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18. Sovereignty.

The conception of personal rights which are not bestowed by a government, but inherent in organized society, has profoundly affected the American theory of the nature of government and the proper organization of government. From the beginning of colonization to the present time, the usual basis of American political thought has been that government is a necessary evil, something to be guarded, circumscribed, and checked. Our forefathers had a wholesome terror of absolutism, and strove to protect themselves against it, not only by carefully devised systems of government, but by theories which denied the possibility of absolutism. Yet no fact can be plainer than that in every organized community a part of the people exercise authority over the remaining part; and that there is no practical limit to the extent of such authority, except physical force.

To this ultimate power of compelling individuals to accept the will of others within an organized state, we give the name "sovereignty." The sovereign power extends to all the functions that can be performed by organized society, and especially to such functions as can be performed only by some central organism. War, foreign treaties, taxation for public purposes, criminal jurisdiction, the personal service and obedience of the individual, — these things are objects of the sovereign power. Sovereignty is simply the ultimate expression

of the public will; and the legal sovereign is that individual or combination of individuals, within the acknowledged forms of the government, which formulates and applies the power of the nation.

The notion of an absolute power over the lives and property of individuals is repugnant to the modern exaltation of the individual; and in various ways throughout the world the physical possibility of absolutism is softened and put into the background by various devices of governmental organization and by the growth of a humane and philosophic spirit. All human governments must be carried on by the one, the few, or the many, — by the despot, the oligarchy, or the democracy; and in all three types there are practical limitations on an absolute use of power. The czar of Russia emancipating the serfs, the French Directory putting down the sections, our forefathers dealing with the Tories, — all found that they must work through human agencies and that they were restrained or weakened by public opinion.

The oligarchic government of the so-called Greek, Roman, and Venetian republics, and of England down to 1830, were kept within bounds partly by internal differences of opinion, and in England mainly by the inevitable participation of the middle class in government. Despotism is tempered not only by assassination, but by the practical necessity of getting things done through agents: Alexander the Great was absolute master of the people whom he conquered, but he was not sovereign over his own army.

19. Sovereignty of the People.

The common phrases, "the people" and "consent of the governed," suggest the distinguishing mark of popular government which makes the legal constitutional depository of sovereignty nearly correspond to the physical possessor of ultimate power. Where nearly all adult men can vote, the majority which decides questions has presumably the preponderant strength necessary to carry out its will; hence sovereignty of

the people avoids many of the shocks and revolutions which under other forms are necessary to enforce the truth that in the long run a minority cannot impose its will on a majority. Yet the government of the many must be carried out by the few; and for a time the majority may yield to a small number of determined men, better armed or better organized or simply in possession.

The long and bitter experience of mankind shows the necessity of protecting the minority, or the apathetic and disorganized majority, by such a formal statement of principles as may cause the powerful to hesitate before applying the ultimate test of sovereignty, namely, the possession of superior force. Tradition, law, and especially definite and written constitutions, compel usurpers to confront vested rights and prejudices which are immense social forces; hence the modern, and especially the American, practice of multiplying checks on the methods and extent to which the sovereign power shall be exercised.

One such check is the doctrine of the compact, — very familiar at the time of the Revolution, — which was in effect that government was founded on an agreement between those who exercised power and those on whom it was exercised, and that to violate the tenor of the agreement would justify resistance. Another form of stating the same thing is the doctrine of indefeasible personal rights, which cannot be destroyed by any act of sovereignty: the doctrine does not in itself save men from arbitrary imprisonment, but it causes their oppressors to be objects of suspicion and dislike. The doctrine of constitutional limitations on government is a way of preventing occasions for dispute; and the doctrine of checks and balances attempts to provide an automatic machinery which shall sound an alarm at encroachments by members of the governing class on others of the same class. Underlying all these ideas is the fundamental doctrine of revolution, — that is, of the moral right of the governed to take arms and try to prove their power as a sovereign majority, if the impalpable restrictions on government are not observed.

This conception denies the sovereignty of those who exercise government, and puts it back on those who have the right, within legal forms, to create restrictions on sovereignty. If, therefore, we can discover who has the ultimate legal power to make and alter constitutions, we have found the ultimate depository of sovereignty. In England, such a power rests in the peers of the realm and the constituencies of the House of Commons. In France, it rests in the electors of the Chamber and the Senate, acting in a joint convention. In the United States, the ultimate sovereign is the body of persons who, acting through two thirds of the members voting in the two houses of Congress, and through majorities of members voting in the two houses of the legislatures of three fourths of the states, may amend the federal constitution.

20. Representative Government.

Another vital question is, Through what medium shall the popular will be expressed? A direct democracy in which all the participants may meet together is the simplest, and comes nearest the exercise of popular sovereignty. Such direct governments are possible only in small communities. In the canton of Appenzell, for instance, on election day ten thousand men assemble, each girt with a sword, and vote for their officers *viva voce*. The New England town-meetings in colonial times and in the country towns to-day are the best examples of such a direct democracy.

No such government can possibly work in a large community, and the method of representation has been devised to permit the expression of the popular will. Representation by voting delegates was unknown in the ancient world. In the Middle Ages the imperial free cities sent delegates to the Reichstag; but they were instructed ambassadors, saying what was put into their mouths by their principals at home. Perhaps the first germs of the true representative system, in which delegates once chosen act upon their own judgment, are to be found in the thirteenth century in the introduction of county

and then of city members into the English Parliament. Even then, for a long time, the intention was to represent interests — land holders, the trading classes, and so on — rather than individuals. Only in the nineteenth century has the principle of representation been pushed to its farthest logical extent, — namely, that every aggregation of a thousand people is entitled to the same representation as every other thousand people in local, state, and national legislatures.

21. English Precedents of Free Government.

Popular government, therefore, combines several conceptions: (1) the right and dignity of the individual; (2) a frame of government which will allow so large a participation as to make the legal sovereign correspond closely to the actual sovereign; (3) a restricting constitution to protect the rights of the minority; and (4) a representative system under which the wishes of a numerous body of persons may be practically voiced.

The free institutions of America to-day are often traced to the free customs of the ancient Germans. Our knowledge of the Germans comes almost entirely from a few pages in Cæsar's *Gallic War*, and from an incomplete manuscript of the *Germanica* of Tacitus, who says that "in important affairs all the people were consulted, although the subjects were discussed beforehand by the chiefs." We have no positive evidence that German institutions were conveyed over into England by the Saxons in the fifth century. We know very little of the Saxon governments previous to the Norman Conquest: there were townships with a meeting of freemen; there were local assemblies, the hundred-moots and the folk-moots (including shire-moots); a king who was merely a leader; later there was a witenagemot, or national council of the great nobles and the clergy. After the Conquest of 1066 appeared the Great Council; but not until 1254 did representatives come from the counties, and not till 1265 from the towns. From that time to the present day, the English Parliament has contained both commons and nobles, and has recognized the principle

of the representation of communities which cannot attend *en masse*.

Up to the Stuarts, Parliament was still much under the control of the crown: Queen Elizabeth once informed the speaker of the Commons that "liberty of speech was not to speak everyone what he listeth or what cometh into his brain to utter." In the seventeenth century, just while the American colonies were being founded, the people of England fought out once for all the question of the divine right of kings as against the right of the people to govern through their representatives; and the representative House of Commons gradually pushed to the front as superior to the hereditary House of Lords. The Petition of Right of 1628, the various constitutions of the Commonwealth period, and the Bill of Rights and Act of Settlement of 1689 and 1701, were more than a defence of personal liberty: they clearly defined the supreme power of Parliament, extending even to the transfer of the sovereignty from James II to William and Mary: the right of the king to interfere with members of Parliament for words spoken or action taken in their respective houses was successfully resisted; the king was compelled to give up any claim to dispense with acts of Parliament. When the House of Hanover began to reign, in 1714, it found the real authority of the nation expressed by a parliament in which the House of Lords was controlled by a small number of noble Whig families, and the House of Commons was made up of elected representatives, a majority of whom owed their seats to the same influence of the nobles; but the principle of representative government was still maintained. With many inequalities of representation, Parliament reflected the public sentiment of thinking men: what England sincerely wanted, Parliament would do.

In the course of their struggle of five centuries, the English people gained the following distinct principles of free government: (1) the right of the people to be represented in Parliament; (2) the right of Parliament to pass acts which after 1707 the king must sign; (3) the right of Parliament

to lay or to withhold the only taxes which might be collected of subjects; (4) the right to supervise the royal accounts and to impeach royal ministers who acted contrary to the law; (5) the right of members of Parliament to express their minds in Parliament without responsibility elsewhere.

English local government during the two centuries of colonization in America was of three kinds: (1) the cities, in which the right to participate in the government was always limited, and in some cases enjoyed by very few persons; (2) the counties, in which there was no popular government at all, the authority being the court of Quarter Sessions, a body of county gentlemen who acted as local judges and also as administrators; (3) the parishes, in none of which was there a representative government, and in few of which was there a general meeting of voters; many were governed by a small board made up of a few people of consequence in the parish and filling its own vacancies. Yet the desires of those in the community who had an interest in public affairs were fairly met by their system of local government.

22. Colonial Precedents of Free Government.

For the American colonist, the foundations of his system of government were the institutions of his native country. No significant influence came upon America from any other country than England: the French, Swedish, and Dutch settlements, which were eventually incorporated into the colonies, were too small and had too little self-government to affect the course of development. Yet in a century and three quarters of colonization, many changes came about in the new governments, for the colonists were placed in a position where they had to act for themselves or be swept out of existence. The conditions of life in a new country made some parts of the English system inapplicable: for instance, since there were no large cities, there was little city government. The colonial communities were also large enough to assume some functions of government which in England could only be exercised by Parliament.

It was not in the minds of the first settlers to found governments at all: they were organized as commercial companies, having seats in England, with charters like those of other commercial companies of the time; the stockholders of the company held annual meetings — the so-called General Courts — at the seat of the company in England. The London Company, which founded the colony of Virginia in 1607, was very like the East India Company, chartered in 1600; and until 1619 it did not recognize any right of self-government among the colonists. Even the colony of Plymouth was founded as a commercial fishing venture, the colonists for some years acting as a company, with all the property in common.

Colonial conditions speedily compelled a different form of government. In 1619, as a later royal governor said, "Representative government broke out in Virginia," by the calling of a delegate assembly from the planters. In 1630 the Massachusetts colony deliberately transferred its charter to America and held company meetings there, to the surprise and wrath of the royal government. The people of Plymouth and of Massachusetts settled separate villages, each of which speedily began to take action in its own local affairs upon the model of parish meetings in England. The scattered planters of Virginia and Maryland organized county courts of Quarter Sessions, such as they had known in England. Thus, within a few years from the planting of the first colonies, they began to set up colonial and local governments not distinctly authorized by England.

The home authorities, however, accepted the situation by permitting the people of Plymouth for seventy years to carry on a government without a charter; they recognized the acts of the Massachusetts government; and in 1632 they admitted the right of representation by granting the charter of Maryland, in which the proprietor was expressly authorized "to retain, make and enact laws of what kind soever, . . . for and with the advice, assent and approbation of the free-men of the whole province."

The type of colonial government was the same in the three so-called "charter" colonies; in the three proprietary colonies; and in the seven provinces having no written constitution, but by the instructions to their governors recognized as self-governing. It included three main factors: —

(1) The royal governors, corresponding to the sovereign in England, with large personal dignity and considerable powers of appointment and general administration, acting under directions from England, and armed with an effective veto on the action of the legislature; Rhode Island and Connecticut had elective governors.

(2) The legislatures, in general composed of two houses. The upper council, appointed by the crown (except in the charter colonies), was at the same time an administrative body, a high court (in several colonies, the highest court), and also a part of the legislature, in all three respects corresponding to the English House of Lords. The lower house, or assembly (in Massachusetts called the General Court), was composed of elected representatives. The legislatures passed laws, subject to the veto of the governor; but even if he approved, the laws might still be disallowed by the home government. Colonial legislatures had abundance of interesting business: they made the criminal laws, and provided for property and other legal relations.

(3) The courts, composed of judges appointed by the crown or governors, but paid by the colonial assemblies. From the decisions of the higher colonial courts there was appeal to the Privy Council in England, acting as a judicial body.

In form the governors, the legislatures, and the courts were all subject to the English government. That control was very imperfect; first, because under the English theory the colonies were governed by the crown and not by Parliament (until just before the Revolution, Parliament never passed any statute specifically altering a colonial government); in the second place, the colonies were far away, and England was much

occupied in the eighty years before the Revolution with European and naval wars; hence the Americans were allowed to care for themselves in most important matters, — they laid their own taxes, they made their own Indian wars, they legislated on many questions of personal right.

The suffrage in the colonies was much restricted. In Massachusetts and New Haven, in the earlier years, nobody could vote but a church member, that is, a Congregationalist; later, in all the colonies there was a property qualification, usually the ownership of land, sometimes the additional payment of taxes. The forty shilling freehold, or ownership of land worth two pounds a year rental, was the usual condition of county suffrage in England; a similar condition applied to the colonies where land was cheap, was easy to satisfy; and hence, without a change of principle, the suffrage was much enlarged. Still, the number of voters in proportion to the population, up to the Revolution, was not more than a third or a fourth as many as at present; the majority of the adult men were not voters.

In local government, again, the colonies applied familiar institutions but expanded in unexpected directions. The parish meeting in England was a small affair; in the New England colonies, where large communities settled within sound of the same church bell, the town-meeting became an intelligent and active little popular assembly. Down to the Revolution, and even to the present day, the town-meetings of rural towns were effective forums for the discussion of public questions; and the participants had a good political education, dealing with such ordinances as the following: —

"It is voated and ordered that from and after ye first day of aprill next Noo Geese shall be Lett goe vpon the Common or in the highways nor in the water with in this Township of Prouidence or with in the Jurisdiction thereof nor vpon any other persons Land Excet those that one the Geese: on the pennilty of the forfiture of all such Geese that are so found."

"Mr. Jonathan Spreague Junr Js Chosen deputy to serue

att the next Genr. Court of Accembly to be held att Newport Jn this Jnstant June Jn the Roome of mr. Andrew Harris."

In the Southern colonies, where there were no villages, but the people settled on plantations most of which had a tide-water front, such popular gatherings were impossible. The local government was a select vestry of the parish, — a self-perpetuating body after the English model, — and for the counties the court of Quarter Sessions, a body of appointed local legislators, also on the model of the English shire.

In all colonial history, the only city charters of much importance are the Dongan charter of 1684 for New York, and Penn's charter of 1691 for Philadelphia.

The criminal law was as frankly cruel in the colonies as elsewhere; but the poorest individual had a good opportunity of bringing his grievances to the attention of the men of power; and, upon the whole, life was freer and opportunities were better than anywhere else in the world.

23. The Earliest State Constitutions.

The experience of the colonial government made the Revolution possible, for it gave opportunity for the American people to organize new governments which could better provide for the needs of the people.

In 1775 the old colonial governments suddenly collapsed, because the people drove the royal governors out: thus, the provincial courts of New Jersey declared that their governor, William Franklin, ought not to be obeyed, and that all payments of money should cease. In a few of the colonies, as Massachusetts, the old assembly kept up its functions; in others, irregular revolutionary conventions or congresses took over the direction for the time being. Until November, 1775, all the colonies professed still to own allegiance to the crown; but, on November 3 and 4, Congress passed a vote advising the people of New Hampshire and South Carolina to establish governments for themselves, and promised military force in their defence. Thereupon began the era of written state con-

stitutions. The word "state" had sometimes been applied to the colonies, and was adopted by all the new political units except the "commonwealths" of Massachusetts, Pennsylvania, and Virginia.

For the organization of state governments the precedents were those of the existing English and colonial governments; but they took care to formulate their principles of government in written documents, very brief at first, but afterwards extended into the type of the present state constitution. First in time was the vote of the New Hampshire Convention: "In Congress at Exeter, January 5, 1776, voted, that this colony take up civil government in this colony in the manner and form following." Ten other states, from 1776 to 1780, framed regular constitutional documents. The charters of Connecticut and Rhode Island were already so liberal that with very slight changes they answered for many years as state constitutions.

The original state constitutions usually contained two parts: (1) A statement of the rights of individuals, which practically repeated, and often used the phrases of, the English documents of personal liberty from Magna Charta down, and of the American Declarations of Rights of 1765 and 1774. The bills of rights in general recorded the doctrine of the social compact, — namely, that government rests upon the actual or tacit consent of the governed; they asserted the great rights of free speech, of speedy and fair trial, of taxation only through representation; one clause in North Carolina even went to the prohibition of perpetuities and monopolies. It was not the conception of the framers of these constitutions that the rights formulated were the only rights of men or were created by their enactments: they held them to be inalienable, founded in human nature and the experience of mankind, and inserted in the constitutions only for their better safeguard.

(2) The second part of the early constitutions was a framework of government, usually expressed in very brief phrases.

With one exception, they provided a single governor, but shorn of many of the powers enjoyed by the colonial governor; and judges, in some cases appointed by the governor, in some cases elected by the legislature. This balanced government of three departments was founded on colonial practice, still prevails in every state, and was adopted in the later federal system. The suffrage was continued much as before the Revolution, with a property qualification and a consequent small electorate. Three of the new constitutions, Vermont, Pennsylvania, and Georgia, made the experiment of a single house, which was soon abandoned. In general, few restrictions were put upon the legislative authority, and it was everywhere accepted as a principle that the legislatures could exercise any powers not expressly forbidden in the text of the constitution, or contrary to traditional right.

Of the eleven new constitutions, ten were put into force by the congress or convention which drew them, and which represented the sovereign authority of the people; but those conventions were also the legislatures of the time. Massachusetts worked out a different system: in 1778 the constitution framed by the legislature was submitted to popular vote and failed; in 1780 Massachusetts called a convention expressly to frame a constitution, which took effect only after a popular majority; and most constitutions since that time have been framed in the same manner. One defect of the early constitutions was that few or none made distinct provision for later amendment; nevertheless each of the first series, except that of Massachusetts, was replaced within about twenty years by a new, complete constitution.

This era of constitution-making deserves analysis. Its significance was: (1) the consciousness that the constitutions must have a written basis and clearly restrict the governing authorities; (2) the conception that the making of a constitution was a slow affair which required special attention, and eventually that a constitution ought to be framed by a special convention and then ratified by popular vote; (3) though the

suffrage was limited, the form of government was very democratic, for the largest governing power was the elective legislatures, balanced and checked by an executive and by the courts; (4) the constitutions included elaborate statements of the rights of the individual, rights preceding and independent of government; (5) the written constitution was considered to be a law of a superior and more permanent character than any ordinary statute.

24. Genesis of the Federal Constitution.

Federal government was nothing new in history in 1776: the Greeks had many federations; the Latin tribes had a federation; the mediæval, Italian, and German cities developed federations; and in 1787 there were in existence three living, though decaying, forms of federal government, — the Holy Roman Empire, the Swiss union, and the United Netherlands. From 1643 to 1684 America had the experience of the United Colonies of New England, formed so "that as in Nation and Religion, so in other respects we bee and continue one"; but that federation had for a century been almost forgotten, and had no influence on our present federal union.

The real forerunners of the constitution of 1787 were the various forms of colonial union from 1690 down: congresses of governors or other representatives of the colonies were held from time to time, usually to discuss joint Indian treaties; many statesmen, including King William III and William Penn, suggested permanent forms of colonial union; in 1754 a congress at Albany recommended a plan of union, drawn up by Benjamin Franklin, in which the votes would have been proportioned to the population of the colonies; in 1765, the Stamp Act Congress, with delegates from nine colonies, acted as the mouthpiece of discontent against taxation, and adopted a ringing statement of the rights of colonists.

All these meetings were occasional or undefined; but in September, 1774, delegates of twelve colonies met at Philadelphia, and speedily took the name of "Continental Congress."

They met simply to protest, and adjourned after preparing spirited appeals to the king and the British people, and drawing up the so-called "Association," or agreement not to import British goods.

The Second Continental Congress met May 10, 1775, after war had actually broken out at Lexington and Concord. Like its predecessor, it was made up of members springing from irregular congresses and conventions, representing the revolutionists in the various colonies; and not a single member had instructions which justified him in aiding to organize a government. Nevertheless, in the face of the difficulties before it, the Congress accepted the responsibility of organizing a military, naval, financial, and diplomatic service. The powers of the Continental Congress were, however, never defined except by practice. It raised armies and navies, borrowed money, commissioned ambassadors, made treaties, issued paper notes, and took charge of territory and Indians, simply because there was nobody else to perform those services for all the colonies.

From the first it was expected that a written federal constitution would be drawn up. The Declaration of Independence, July 4, 1776, made the necessity for a closer form of union greater; and Congress from time to time discussed articles of confederation, and finally submitted them in November, 1777. The states were slow in ratifying, principally because the Articles of Confederation did not give Congress control over Western territory; but on March 1, 1781, the last ratification by a state legislature was communicated to Congress, and the Articles of Confederation went into force, superseding the vague and changeful authority of the Continental Congress.

The government under the Confederation was brief and unsatisfactory. Congress ceased to sit in October, 1788, less than eight years after the Articles went into effect. Congress did not have powers to lay taxes directly, or to regulate commerce between the states or with foreign nations; and the feeble executive and judicial officers were all appointed by and responsible to Congress. Nevertheless, the Confederation was

on the whole a successful experiment in government: it had powers never before distinctly granted by a federal constitution; it could assess sums of money upon the states; over the Western lands it assumed necessary powers not granted, and it passed three ordinances for their sale and government; it successfully negotiated with Great Britain the treaty of peace of 1783, and several commercial treaties. Above all, the Confederation was a profound lesson to the people of the United States of the necessity of yielding greater powers to a general government, if the country was to take its place among nations; and it was a nursery for later statesmen, — Hamilton, Jefferson, Madison, and Monroe were all members of Congress at one time or another, and learned to understand its workings. After the pressure of war was taken off in 1783, the workings of the Confederation government showed that a stronger national authority was necessary.

That stronger authority was furnished by the Federal Convention of 1787, which was suggested as far back as 1780, strongly advocated by Washington in public and private letters, formally urged by the legislature of Massachusetts in 1785, and definitely proposed by a preliminary convention at Annapolis in 1786. The Convention was organized on a plan which still remains the best for such a work: it was composed of delegates appointed solely for the purpose of framing a new constitution, and it included a body of practical men, most of whom had seen service in both colonial and state governments. By the use of their experience, and by the constructive genius of men like Washington and Madison and Hamilton and Roger Sherman and Charles C. Pinckney and James Wilson, the constitution was so made as to answer to the needs and purpose of the United States then and for the century since.

Mr. Gladstone has called the federal constitution "the most wonderful work ever struck off at a given time by the brain and purpose of man." Mr. Gladstone was mistaken: the federal constitution is not a creation, but simply the recorded and well-arranged statement of what experience showed

to be the safest method of governing the American states. The fathers of the constitution applied the experience of English government from the Conquest to the time of the Revolution, the experience of the colonies, the fresh experience of the new states, the experience of the Confederation. The president was a larger state governor, his veto was taken almost verbatim from the Massachusetts constitution; the Supreme Court was on a larger scale the colonial and state courts and the English Privy Council acting on appeals; the Senate was the old colonial council expanded; the House of Representatives was the colonial and state assembly over again; the constitution was simply the crystallization of centuries of actual practical experience of free and representative government, adapted to the needs of a federal republic of immense area and possibilities.

25. Unity of American Government.

Since the federal constitution applies to the whole United States, and since the general government is powerful and impresses the imagination, Americans have come to look upon the federal constitution as the one national constitution, and upon the states and their constitutions as subordinate. Such was not the conception of the fathers of American government, nor is it the actual system under which we now live. There is no national union without states, and equally there are no states without union; there is no town, city, or county, except as a part of a state or a territory. The correct view of American government is that every form of government, national, state, or local, emanates from the same authority, — namely, from the people of the United States. The fundamental basis of American government is the right of a people to organize and form governments for themselves. Organization of state governments preceded the formal organization of a national government; and hence the federal constitution throughout presupposes the existence of states, but of permanent states which shall thereafter remain in the Union. The original state

governments were framed with the expectation that there would also be a national system, and with the intention to continue a system of local governmental units. From the beginning, the Americans had been accustomed to the control of England over their governors, their legislatures, and their courts; and hence they saw no loss of liberty in the submission of state governors, state legislatures, and state courts to a central authority springing from the whole nation; and they expected to control their own towns, counties, and cities.

In ratifying the federal constitution, every state thereby consented to a modification of its own constitution: when, for instance, they agreed that the United States have the sole power to make treaties, they formally abjured authority to make treaties; when they adopted the federal power to lay taxes, they tacitly agreed that state taxes should not interfere. The principle of American government is, each for all and all for each. In this sense, the people of Massachusetts in 1787 helped to modify the state constitution of North Carolina, and the people of Georgia helped to lay restrictions on the commonwealth of New York.

Whatever the historical theory as to the origin of the Union, in practice there is only one source of authority, one form of government, and one group of fundamental powers. The source is the American people as a whole, who alone have the power, through a complicated machinery, to alter the federal constitution and thereby may alter their state constitutions, their city charters, and their local governments; the state governments and the local governments are not separate from each other or antagonistic to each other, — they *are* each other, in that they are bound by the same system of law and tradition.

The one form of government is the whole body of governing officials, organized into three great groups, — a national service with its administrative center at Washington, state staffs centered at the various state capitals, and local meetings or bodies, each acting in and for its own place. The president of the United States is no more independent in his authority than the governor of a state or the mayor of a city: they are

all parts of one system, all subject to the restrictions of the federal constitution, all acting under a body of tradition in which each must respect the prerogatives of the other.

The one group of fundamental powers is all the powers inherent in any government, less a few restrictions expressed in the federal constitution. In practice, however, the nation, states, and local governments are to a large degree set off from each other through their functions.

26. Separation of Powers.

In a centralized country like France, the unity of governmental power is more clearly seen because there are no states, and the localities are directly subject to the central authority. In the United States the exercise of power is decentralized through two great restrictive principles which seem to be inbred in American life — separation of powers and division of powers.

The first of these restrictions is the separation of powers, or, as it is often called, "checks and balances." In England, after the Norman Conquest, royal power was military, and the king was at the same time the source of law, of administration, and of justice. Gradually Parliament grew up to power, till, after the last royal veto was written in 1707, it became the sole legislative authority. By the Act of Settlement of 1701, the judges got a tenure during good behavior, and the courts became free from royal interference. Hence the great French publicist, Montesquieu, in his famous book *L'Esprit des Lois*, published in 1748, thought that he had discovered in England a system by which the legislature made law: the king could not make it, but could execute it; and the courts could neither make nor execute laws, but could apply them to specific judicial cases; thus each of the three departments of government was a check upon the other. As a matter of fact, there has never been such a subdivision in England: when Montesquieu wrote, the king had become inert, the judges could not hold the acts of Parliament void,

and Parliament was already the great motive force, as it still remains.

The American colonies practically had this subdivision of powers: the governor could check the assembly, and the assembly could check the governor; and the courts to some degree could check them both. Our forefathers liked that system, and they incorporated it into their state constitutions; but the Confederation was organized virtually on the parliamentary plan, — its executive officers were appointed by Congress, were responsible to Congress, removable by Congress, and Congress also set up and pulled down courts. This is practically the sole experience within the United States of a system of parliamentary responsibility, and it was completely disrupted by the federal constitution. In 1787, separation of powers was formally introduced into the federal system: a Congress with large law-making powers was created; a president was provided, neither elected by Congress nor responsible to it; a system of courts was set up to apply the federal law, and very soon to lay down the mighty principle of its right to hold statutes invalid.

27. Division of Powers.

The second great American principle of government is the division of powers between the nation and the commonwealths, and within a commonwealth between the state and local authorities. The fundamental principle of our federal government is that the inherent sovereign powers in the community are normally exercised through the state governments, and therefore that any residuum of power is left to the states and not to the Union. Under our system of fixed and rigid constitutions, the division of powers is expressed, first, in the federal constitution, and then in the state constitutions; and disputed questions must usually be decided by the courts. Therefore, if we wish to know what in practice are the limits between national and state powers, and also between powers exercised directly by the states and indirectly by the local governments

springing from the states, we must search the recorded judicial decisions.

To the national government, and hence to the national officials, are committed the immense powers of war and peace, finances for national purposes, foreign relations, control over all territory not actually organized as states and over all commerce which does not begin and end within the boundaries of a single commonwealth.

The larger body of legislation is left to the states, which regulate most of the relations of individual to individual, which create and regulate corporations, which have control of property rights, land tenure, inheritances, education, and religion, supervise by far the greater volume of all business and commerce, administer almost the whole of criminal law, and care for the weak and dependent. In most respects the states come nearer to the individual than does the federal government.

Local governments are less separated from the state governments than the states from the national government, because their form is entirely dependent upon easily alterable state legislation; but the habits of the people are such that all the states practically concede to the localities and to the cities the immediate personal care of the population. In their hands are the streets, water, lighting, education to a large degree, many dependent classes, local transportation, and the maintenance of public order.

To sum up, questions of health, cleanliness, and morality, the questions which most closely and most frequently touch the individual, are given to the local governments; business and criminal relations to the states; national defence and foreign relations to the nation. The national control of foreign and interstate commerce makes the division of commercial powers indefinite and disputed.

28. The Written Constitution.

One of the strongest parts of American government is the respect for written constitutions. The constitution of a country is really its method of working: the so-called "principles of the British constitution" are nothing more than the generally accepted ideas as to what the government of Great Britain ought to undertake, particularly as determined by the historical knowledge of what it has undertaken.

We Americans use the term in a somewhat different sense. By "constitution" we mean a specific written instrument defining the government; and an executive or legislative act is unconstitutional if contrary to the terms of that instrument. The five elements of the fundamental conception of our constitution are, that it is definite, comprehensive, supreme over all other forms of written law, fundamental, and alterable only by a special process.

(1) The first of these principles is very ancient: the Ten Commandments, the twelve tables of Roman law, the capitularies of Charlemagne, were put in writing or graven on tables in order that men might know the law and thus obey it, and that the law might be preserved as it was uttered.

(2) A good constitution must cover the whole field of government, at least in general terms. Laws which relate to principles of great importance often get to be regarded as almost irrepealable: thus the organization of the Roman assemblies was crystallized by a succession of venerable statutes; in the Middle Ages arose the system of granting imperial and royal charters to individuals and to cities, universities, abbeys, and other corporations, in which charters often a detailed form of government was laid down. These documents probably suggested the similar charters of the early American colonies; but they were all partial, incomplete, and depended on a higher authority than their own.

(3) During the English Commonwealth the idea was thrown out, perhaps because of the influence of American governments,

that there ought to be a fundamental written instrument, superior to any act of Parliament. In 1647 the army began to draw up written schemes of government, of which the most important was the so-called "Agreement of the People," issued in 1649. It declared itself to be intended "for a secure and present peace, upon grounds of common right, freedom, and safety"; it reformed the representation, by apportioning it according to population; it fixed the electorate, established a council of state, and contained liberal provisions with regard to religion; it gave to the representative body "supreme trust in order to the preservation and government of the whole"; . . . except that six Particulars "are, and shall be, understood to be excepted and reserved from our Representatives."

This constitution was never put into force; but in December, 1653, a so-called "Instrument of Government" was drawn up, because, as Cromwell said, "In every government there must be somewhat fundamental, somewhat like a Magna Charta, which shall be standing, unalterable." This is the only written constitution which has ever prevailed in England, and it came to an end with the death of the Protector, in 1658.

The idea of a superior written law was clearly revived in the Habeas Corpus Act of 1679, the Bill of Rights of 1689, and the Act of Settlement of 1701, though in theory those acts were all revocable. The best examples of written constitutions in this period are the royal charters of the three New England colonies, and the famous Fundamental Orders, drawn up by the people of Connecticut in 1638, which is the first well-articulated constitution ever made by representatives of a popular community for their own government. When the Revolution broke out, the states made documentary constitutions for themselves.

The Articles of Confederation were intended to be a national constitution, and have three of the characteristics already mentioned: they were fixed in writing, superior to statutory law, and required a special process for amendments.

To carry out the third criterion of a written constitution, —

that it shall be superior to other laws, — is a hard thing in a federation where there are several forms of law. A prime difficulty of the Confederation was the lack of a method by which the supremacy of the federal constitution could be asserted over state constitutions. The constitution of 1787 distinctly reformed that difficulty by a clause providing that "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Under the federal constitution has been created a hierarchy of laws. First and supreme is the constitution of the United States; second, come federal treaties and laws, consonant with the constitution; third in efficacy are the state constitutions, which must conform to the federal constitution and also to consonant laws and treaties; fourth, comes state legislation, which must not be in contravention with either one of the three higher forms of law; fifth, come the ordinances of local and municipal governments, which must not go beyond any of the four higher forms of law; sixth, come the by-laws of corporations of every kind, such as universities, commercial companies, benevolent societies, all of which must not go contrary to any of the five higher forms already mentioned.

(4) A good constitution must be brief, or else it becomes a code of laws. The original federal constitution has 4,000 words, and may easily be committed to memory by any quick student; the state constitutions vary in length, the first New Hampshire constitution of 1776 having 900 words, and the Louisiana constitution of 1898 having 40,000 words. In general, the longer and more detailed the text of the constitution, the more opportunity for dispute about its meaning. The increase in length is due to the habit of looking upon a constitution as superior to a law: conventions insert in a new constitution anything that it is desired to put beyond the power of

legislation; hence the constant tendency is to increase the prohibitions and limitations in the written constitution, and thus to tie the hands of public officials for the time being.

29. Preparation of Constitutional Amendments.

The fifth criterion of a written constitution is that it be subject to a special form of amendment. Though in some European countries constitutions are enacted like ordinary laws, a special method is essential if the distinction between ordinary statutes and a supreme constitution is to be observed. Efficient methods of constitutional amendment must call for special consideration, must attract public attention and invoke public opinion; for a poor constitution once adopted cannot easily be changed.

The federal constitution provides two different methods for its own amendment. The first is the calling of a convention, similar to the Philadelphia Convention of 1787, on the applications of the legislatures of two thirds of the states; it has never been employed, although there was a movement for a convention in 1788, and in 1861 there was strong pressure for a convention to find a means of obviating the Civil War. The ordinary method for the submission of federal amendments is a concurrent vote of two thirds of both houses. Hence the initiative of amendment may be taken by states through their senators, or by any member of either house who cares to submit a joint resolution.

In the first century of the federal government, more than 1,900 amendatory resolutions were submitted, many of them including more than one clause. Out of all those 1,900, only nineteen have ever received the adhesion of two thirds of both houses, of these only fifteen have actually been added to the constitution, and these fifteen are the result of two periods of discussion, 1787 to 1802, and 1865 to 1869.

In the states the submission of separate amendments is much more common, and complete revisions by conventions appointed for that purpose are also frequent. Various methods

of amendment are prescribed by the state constitutions. In some states, no amendment can be considered which has not been recommended by two successive legislatures; another method is to require a special majority in each house, sometimes as many as three fourths of the members; in some states, amendments cannot be submitted oftener than once in a fixed number of years; in a few cases commissions have been created to draft a constitution and report it to the legislatures. In Delaware, the legislature makes constitutional amendments, but only after a previous legislature has voted them and a new election has been held. The most common method is that amendments shall be approved by a special majority of both houses, and thereupon submitted to the people for their ratification. No complete constitution has been drawn up by a state legislature since 1778, with one exception, — Nebraska in 1866.

A constitution loses coherence after it has been several times amended, and the growth of the community sometimes requires a new statement of principles. In some states conventions must be called at fixed intervals, usually about once in twenty years. Conventions have rarely any other functions than to prepare revised constitutions, and the members are chosen by special election. Men will attend a constitutional convention who would not give their time for service in the legislature; hence the personnel of the convention is usually higher, and it is more accustomed to defer to the expert authority of jurists and public men. A convention sometimes sits for months, and usually submits its work as a whole, sometimes setting apart for a special popular vote some clause upon which the whole constitution does not depend. For instance, the New York Convention of 1894 subjected to separate votes clauses on apportionment and canal improvement.

From 1792 until near 1890, about a fifth of the new constitutions were put in force by the fiat of the convention. Nevertheless the attempt in 1858 to admit Kansas as a slave state, under

a constitution which had not been completely submitted to popular vote, was thought to be a violation of the dearest rights of the American people. However, since 1890, conventions in Louisiana, South Carolina, and Virginia have assumed the right to declare a new constitution in force without a popular vote, for the simple reason that the voters under the old constitution, if they had been consulted, would have shown a considerable majority against the new constitution; and such action is legal if the previous constitution does not require a popular vote on amendments.

30. Ratification of Constitutional Amendments.

Both separate amendments and complete constitutions usually require popular ratification after they have been formulated by a legislature or by a convention. Every amendment to the federal constitution has received formal ratification by the state legislatures in three fourths of the states: but the concurrence of sixty-eight legislative houses in thirty-four states is a degree of agreement almost impossible except in the face of a manifest public danger. Out of the series of twelve amendments submitted by Congress in 1789, only ten got the three-fourths majority; the Eleventh Amendment — on the judiciary — passed both houses almost unanimously in 1794, but was nearly four years in process of ratification; the Twelfth Amendment, submitted in December, 1803, — on the election of the president, — was ratified in nine months. In 1803, President Jefferson urged the adoption of a constitutional amendment covering the annexation of Louisiana; but he could not even get it introduced. A curious amendment, prohibiting the granting of titles of nobility by states, passed both houses with very little difficulty in 1810, and got twelve of the necessary thirteen state ratifications. In 1861 the so-called "Corwin Amendment," intended to prevent secession by a compromise, was passed by two thirds of both houses and received the unnecessary signature of the president, but was ratified by only three states, and was speedily dropped. The three great Re-

construction amendments, the Thirteenth, Fourteenth, and Fifteenth, were ratified from 1865 to 1870 only by great pressure upon the states which had been in rebellion; for not one of those amendments could have been adopted without the approval of a considerable number of Southern state legislatures. Since the Fifteenth Amendment, no proposition of amendment has received the approval of two thirds of both houses.

In every state except Delaware, single amendments must come before the people. One state, Rhode Island, in which there was no provision for making amendments, was by this inelasticity in 1842 brought to the verge of civil war, and afterwards adopted the usual system of constitutional amendments. The foundation idea of popular ratification is undoubtedly the "compact theory," — that government is founded on agreement of the persons governed, the favoring opinion of the majority being accepted as that of the whole.

Nevertheless, a very considerable number of state constitutions have been put in force without any submission to the popular vote. In the first Revolutionary series, Massachusetts was the only state to ask for popular sanction. Down to 1897, there had been 132 constitutions framed by conventions, of which 88 were submitted to popular vote and 1 was submitted to another convention: 43 were declared to be in force by the convention itself; of these, 20 were first constitutions, and 23 amended constitutions.

Popular votes on constitutions or single amendments are usually taken at the time of some regular election, and receive less attention than the names of the candidates for office. Amendments to the constitution thus submitted are likely to be adopted; but sometimes people vote down the whole work of a laborious convention, as in 1854 in Massachusetts. A majority of the votes cast is usually sufficient to make the necessary constitutional change. Once voted on, there is no further question of the legality of the amendment, even though the constitutional convention has gone farther than prescribed by the statute creating it: clauses duly submitted and favorably

voted become a fundamental part of the constitution. Of course no popular ratification can give authority to a clause in a state constitution which is not in accordance with the federal constitution.

31. Construction and Application of Constitutions.

The text of the federal constitution is legally supreme over all other forms of law within the boundaries of the United States: it goes beyond custom; it supersedes any principle of international law which collides with it; it overrides previous and subsequent state constitutions and statutes; it controls local and municipal ordinances, and the acts of all corporations, public and private. Nevertheless, few subjects are habitually so much discussed by the courts as the meaning of the federal constitution, and in like manner of state constitutions. A constitution, like a statute, is phrased in words drawn up by human and often fallible men; and there may even be two clauses of a constitution which do not agree with each other. The meaning of the words of a constitution, and especially of the federal constitution, becomes of great importance: for instance, at intervals from 1787 to 1895, the courts have without much success endeavoured to discover what our ancestors meant by "direct taxes."

Yet we must know what the constitution means in order to appreciate the meaning of statutes "pursuant" to the constitution. Every person who is called upon to perform a public act must conform to the federal constitution, but in order to do so he must make up his mind what the constitution means: the president, when he issues an order, thereby assumes that he is acting within the constitution; the members of Congress in passing on a statute must act within the restrictions of the federal constitution. The courts, and especially the federal courts, are oftenest called upon to apply the constitution, because in private suits their attention is called to rivalries in meaning between that instrument and national or state statutes. Inasmuch as the courts deal continually with vested rights, they

must know the traditional use of language, and the meaning of phrases in a legal sense. To the Supreme Court of the United States in the last instance belongs the mighty office of expounding the federal constitution, of showing the adjustment between its parts, and of pointing out in all varieties of law any lack of harmony with it.

The general principles of the construction of constitutions and statutes are simple: words are used in their ordinary sense, if it can be ascertained; where two clauses seem to conflict, the courts will usually so construe the words as to give effect and vitality to the whole; the intention of the framers may be consulted. The courts, however, take extraordinary precautions: they construe constitutions and laws only when they are obliged to consider them in order to decide cases actually before them; and they apply previous principles, and work out a theory of the constitution and laws, which may be carried forward from year to year. To the federal and state courts, therefore, belongs the general duty of expounding and applying the various constitutions. In the course of a century a body of connected, and on the whole coherent, doctrine has been laid down in court decisions with regard to the meaning of the federal constitution. The state constitutions change more frequently, are much more loosely drawn, and each new one requires a new body of decisions to establish its meaning.

Part II.

The Will of the People.

CHAPTER IV.

SUFFRAGE AND ELECTIONS.

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33. History of Anglo-Saxon Suffrage.

Representative government necessarily depends on a body of persons having the right to be represented, that is, to vote for representatives. Nobody quite knows who chose representatives to the Anglo-Saxon folk-moot; but, after the Norman system, first the counties, and then also the cities, had the right to send members to the Great Council. In the English cities, the constituents were the freemen of the city, that is, those who had a membership in the municipal corporation established by royal charter. In the English counties, the suffrage went to the landholders; and gradually was developed the theory that the necessary qualification was the possession of a forty-shilling freehold, — that is, ownership of land that was worth two pounds a year, which in early times was a high property qualification; later, other forms of landholding were allowed.

The American colonists brought over with them the idea of a limited suffrage, and a suffrage different in conditions for local and colonial elections. In the first half century of colonization there was no property qualification, but in Massachusetts and New Haven none but church members could vote;

then sprang up the idea that the people who had property should be responsible for the conduct of public affairs; and gradually, beginning about 1681, the ownership of land, or of considerable personal property, was made a qualification everywhere in the colonies. An acceptance of the principles of the Christian religion was necessary, and Quakers were for a long time excluded. People lost the suffrage for bad character or behavior, — for instance, "those notoriously vitious or scandalous, as common Lyars, Drunkards, swearers or apostates from the fundamentals of religion."

The federal constitution very wisely avoided the creation of a uniform national suffrage, by requiring that voters for presidential electors and representatives should be the same as those for the most numerous branch of the state legislatures; hence every enlargement of state suffrage was a corresponding extension of national suffrage in that state. Religious qualifications began to drop off soon after the Revolution; and after 1815 property qualifications lost ground, partly because it began to be seen that a man who did not own property had an interest in the welfare of the country, and partly because throughout the Union it was common to create fictitious property rights, so as to give a poor man the suffrage. After 1830 the coming-in of great numbers of emigrants put a premium on the extension of the suffrage, because it was believed that they would prefer states in which they could easily acquire a vote; and hence eleven states in the Union still permit a man to vote before he is naturalized.

34. Qualifications for Voting.

The theory of representation does not require that every member of the community shall vote, and there are several classes of exclusions. (1) First comes real or supposed incapacity: children are not independent until the age of majority, of legal change to manhood and womanhood; and no one votes till twenty-one years old. Criminals, the insane, persons in confinement, are necessarily cut off from the polls.

Paupers in institutions, and in some states those who receive outdoor relief, are excluded from voting, on the ground that a pauper is nearly always a person inferior in mental or moral equipment.

(2) The second group of disqualifications is temporary: the almost universal practice is to require a man to reside in a state one year before he can vote, and to reside in a voting district for thirty or sixty days. In England a man may vote in every county and city and university in which he possesses the qualifications there required; one person has cast thirteen legal votes in the course of a day: in the United States it would be a criminal offence for a man to vote in two residences at the same time. Closely akin to the residence qualification is the requirement that foreigners shall have at least declared their intention to become citizens.

(3) A third group of qualifications is material. Though the holding of real estate has long since disappeared as an absolute requisite of voting, a tax qualification still continues in many states of the Union, although it has disappeared in most of the Northern states. There is a small poll-tax requirement in Pennsylvania, and in many of the Southern states. Most of the richest and most prosperous communities in the United States have abandoned all forms of property or tax qualifications.

(4) A fourth group of restrictions is moral and intellectual. In some states those who have been convicted of crime are nominally excluded; but in practice it is so easy for a man to go to another community that the restriction is of very little account. Those who give or receive bribes are in about two thirds of the states disqualified for a brief time, or permanently; but the restriction is seldom applied. Religious disqualifications appear in a few state constitutions, which provide that no person shall vote who does not believe in a God and a future life. No states any longer fix a criminal penalty on agnosticism or atheism; under the laws of the United States, however, habitual polygamy, even though claimed to be a part of reli-

gion, excludes from the suffrage in territories, and this is also the case in Utah and Idaho. Connecticut, Massachusetts, Maine, Wyoming, Washington, and Delaware have each a genuine educational clause, by which, in order to vote, a man must be able to read at least a section of the constitution, and to write — usually his own name: thousands of people will not put their capacities to the test. In Mississippi, Alabama, South Carolina, and Virginia, since 1890, a so-called educational qualification has been inserted into new constitutions, the usual form being that an elector shall be able to "read or understand" the clauses of the state constitution. The real purpose of these provisions is to disfranchise the negro, since the white election officer is with great difficulty persuaded that any negro "understands" the constitution. In four states there exists the "grandfather" clause, — namely, that the educational limitation shall not apply to descendants of a person who was a voter before 1867 or a soldier in the Civil War. This is expressly intended to relieve illiterate white persons, and is of doubtful constitutionality.

Negroes having the property or tax qualification were allowed to vote in some of the Northern colonies, and in North Carolina until 1835. Several of the Northern states, as Connecticut, New Jersey, Pennsylvania, and the Northwestern states, prohibited negro suffrage; as late as 1867 Ohio voted against it by a majority of 50,000. Soon after the Civil War, the suffrage was conferred upon the negro in most of the new state governments by reorganized legislatures in 1867–69; but it was plain that if the dominant element of the white race recovered control, the negroes would be disfranchised. Hence, by the Fourteenth Amendment in 1868, the representation of any state was to be diminished if it disfranchised a class of voters. The Fifteenth Amendment, ratified in 1870, went much farther, by providing that no citizen should be deprived of the suffrage "on account of race, color, or previous condition of servitude." By the decisions of the Supreme Court, this

clause does not apply to Asiatics; and the states may, and three of them do, prohibit the voting of members of the Mongolian race.

Notwithstanding this provision, since 1874 the negro has been deprived of the suffrage in most of the Southern states, either by terrorizing him so that he does not offer to vote; or by devising a system of balloting tending to throw him out on a technicality; or by unabashed miscount of votes; or by a complicated system requiring tax receipts. The recent Southern constitutions, therefore, are simply a legalization of previous indirect and often illegal methods for preventing the reception of the negro's vote.

35. Woman Suffrage.

The non-admission of women to the suffrage was the universal practice in every country having the representative system until about thirty years ago, when some of the American territories began a new system. There are now four states, Colorado, Wyoming, Idaho, and Utah, in which women have suffrage; one, Washington, in which they formerly had it, but have now lost it. In several of the other states, woman-suffrage amendments have been submitted, but have failed of popular approval; Kansas alone allows complete municipal suffrage; Iowa and Montana allow a vote on the issue of bonds and like financial questions; many more allow women to vote for school officers. Twenty-six of the forty-five states recognize the right of women to participate to some degree in the choice of public officers and the decision of public questions.

The right to vote usually includes the right to be elected to office: hence, in the full woman-suffrage states, women frequently sit upon juries; where women have school suffrage, they may be and sometimes are elected local and state superintendents; where they have municipal suffrage, as in Kansas, women are sometimes elected mayors; and in all the states women are occasionally appointed to executive boards, particularly those relating to charities and corrections.

The main argument in favor of woman suffrage is that there is no logical reason for discrimination : if the suffrage is a duty, women ought to perform it ; if it is a privilege, they ought to enjoy it ; if it is a means of education, they ought to profit by it. The experience of woman-suffrage states is, however, that though the presence of women at the polls tends to take away roughness and violence, the interest of women in elections is smaller than that of the men, and after a few years only a small proportion of them vote. This is notably the case in school elections in states where women have school suffrage, though in Boston and Cambridge the woman vote appears to hold the balance of power in the election of school committees.

The principal arguments against woman suffrage are, first, that women have domestic duties which are not consonant with public service ; and, second, that it is convenient to have a select electorate, and that the voting of women does not make any permanent and significant difference in the outcome of parties, while it does create a new responsibility for women. Although full woman suffrage is now making way in the North-western communities, many of which have few women in proportion, it has for many years made no gain in the older communities. On the other hand, school, municipal, and tax suffrage, though widely extended, have not interested women so much as was expected.

36. Electoral Districts and Registration.

Before votes can be cast, two preliminaries are common, — districting and registration. The administrative subdivisions of the states and territories constitute the districts for the choice of the more important officers ; counties make districts for the choice of county officers, cities for the election of city officers ; but for the choice of members of Congress and of state legislatures, the states must be subdivided by the legislatures, and this gives rise to the practice known as the "gerrymander." Acts of Congress of February 2, 1872, and January 16, 1901, provide that the districts for the choice of

representatives shall be composed of contiguous and compact territory as nearly equal in population as possible; but the rapid growth of population quickly disturbs the most careful apportionment, and legislatures frequently subdivide in irregular fashion, so that one party shall have a small majority in many districts, and the other party shall have a large majority in fewer districts. By this process it is possible to give the minority more members than the majority: thus in 1893 one Connecticut congressional district had 122,000 inhabitants, and the adjoining district had 249,000; Chicago, with about one third of the population of Illinois, had only one fifth of the members of Congress. This process is freely applied also in state elections: in 1891 the Supreme Court of Wisconsin annulled two state apportionment acts in succession because in absolute defiance of the state constitution, and the legislature had to be called to pass a third act. The process of gerrymandering is a denial of the true system of popular government.

In colonial times, all the people of a town or a county assembled to cast their votes; but at present in every state small subdivisions are provided, for two reasons: first, in order that voters may know each other's faces and thus detect fraud; and second, that there may be time enough to get in the whole vote in one day. In New York City there are nearly 1550 such voting precincts, or about 400 voters to each precinct.

The unwritten, but nevertheless almost universal, rule is that for any elective office a man must live in the district in which he is chosen. In Germany or England or France any qualified person may be elected to the national legislature from any district, and this gives an opportunity for young men to win their spurs by contesting close districts, and also makes it possible to keep in public life eminent men whose home districts support the other party. In America every councilman must live in his ward, every state representative in his county or town, every congressman in his district; and the gerrymander is frequently so employed as to throw the residence of

a public man into a district which is hostile to him politically. Thus in 1890 the Ohio legislature made a majority against Mr. McKinley, and he lost his seat in the House of Representatives.

In about two thirds of the states in the Union there is a system of registration before elections. The advantage is that it gives time beforehand to settle contested questions as to a man's fitness to vote, and to identify him beforehand so as to detect him if he represents another voter; it also offers means of preventing some forms of frauds in the count of votes. There are two systems of registration. Of the first of these, New York is a type: a man must every year present himself, usually in person, and see that his name is recorded; no name can legally get on the list unless it is demanded by the voter. The other system, employed in Massachusetts, Pennsylvania, and many other states, puts a man who has once qualified permanently on the list, until some reason is given for striking him off; this leads to dangerous frauds, because false names go on and names of dead persons are not expunged. In some cities scores of thousands of illegal registrations stand from year to year, and are voted by repeaters who go from ward to ward. Of course the annual registration practically requires a man to appear twice, once to register and once to vote, and therefore probably somewhat reduces the vote; but preliminary registration is in cities the only possible safeguard against illegal voting on a large scale.

37. Methods of Voting and Count of Votes.

The usual method of voting in England down to 1872 was *viva voce*, a system which made public the voter's preferences, and which could not be applied at all in elections for a large list of officers. In the state of Kentucky, until the new constitution of 1891, some of the elections in rural communities continued *viva voce*: in Jackson County, for instance, the election for sheriff consisted in arranging the friends of one candidate on horseback on one side of the road and the friends of the other candidate

on the other side, and the longest line got the election. At present in every state all elections must be by ballot; first, to make possible a secret vote, and, secondly, to preserve the evidence of the vote cast.

Originally the ballots were written; then it was found that the candidate had a better chance if his friends provided printed tickets beforehand; then, as the practice developed, tickets were prepared for a long list of candidates, the parties frequently adopting devices or colors which made their ballots known. If a man did not wish to vote for everybody on the ticket, he erased names, or substituted other names; this was called "scratching," "splitting," or "cutting."

In practice the ballots ceased to be secret, since the party tickets were usually recognizable even when folded; and frauds were often practised by printing under the party heading a ticket which contained candidates of the other party. In 1888 began a great reform, which has swept over most of the country, — the so-called "Australian ballot system," under which all the candidates appear upon one ballot, prepared and distributed by the state, and the voter indicates on the ballot his choice of candidates. Since all the ballots are alike, and since they are prepared in a booth out of sight of other persons, secrecy can be maintained. Furthermore, third parties and independent movements can get their candidates before the voter without the former machinery of "strikers" and "heelers," who distributed only the tickets for which they were paid. The Australian ballot may also furnish evidence against a man who votes fraudulently.

The various forms of Australian ballot are reducible to two: in the first, the candidates for each office are arranged in alphabetical order, each accompanied by the name of the party or organization which nominated him, and the voter must have sufficient intelligence to follow through the ballot and pick out his favorites; in the other type, each party ticket is printed in a separate column, and the voter may cast his vote for all the candidates of his party by putting a mark opposite the party

THIS BALLOT SHOULD BE MARKED IN ONE OF TWO WAYS WITH A PENCIL, HAVING BLACK LEAD
1st VOTE A STRAIGHT TICKET, MAKE A CROSS X MARK WITHIN THE CIRCLE ABOVE ONE OF THE PARTY COLUMNS.
TO VOTE A SPLIT TICKET, THAT IS, FOR CANDIDATES OF DIFFERENT PARTIES, THE VOTER SHOULD MAKE A CROSS X MARK BEFORE THE NAME OF EACH CANDIDATE FOR WHOM HE VOTES.
IF THE VOTE MARKED IN THE CIRCLE FOR A STRAIGHT TICKET DOES NOT CONTAIN THE NAMES OF CANDIDATES FOR ALL OFFICES FOR WHICH THE ELECTOR MAY VOTE, HE MAY VOTE FOR CANDIDATES FOR SUCH OFFICES SO OMITTED, BY MAKING A CROSS X MARK BEFORE THE NAMES OF CANDIDATES FOR SUCH OFFICES ON ANOTHER TICKET, OR, BY WRITING THE NAMES, IF THEY ARE NOT PRINTED UPON THE BALLOT, IN THE BLANK COLUMN UNDER THE TITLE OF THE OFFICE.
TO VOTE FOR A PERSON NOT ON THE BALLOT, WRITE THE NAME OF SUCH PERSON UNDER THE TITLE OF THE OFFICE IN THE BLANK COLUMN.
ANY OTHER MARK THAN THE CROSS X MARK USED FOR THE PURPOSE OF VOTING OR ANY ERASURE MADE ON THIS BALLOT, MAKES IT VOID, AND NO VOTE CAN BE COUNTED SECTION
IF YOU TEAR, OR DEFACE, OR WRONGLY MARK THIS BALLOT, RETURN IT AND OBTAIN ANOTHER.

REPUBLICAN TICKET. For President, WILLIAM McKINLEY. For Vice-President, THEODORE ROOSEVELT.	DEMOCRATIC TICKET. For President, WILLIAM J. BRYAN. For Vice-President, ADLAI E. STEVENSON.	SOCIALIST LABOR TICKET. For President, JOSEPH F. MALLONEY. For Vice-President, VALENTINE REMMEL.	PROHIBITION TICKET. For President, JOHN G. WOOLLEY. For Vice-President, HENRY B. METCALF.	SOCIAL DEMOCRATIC TICKET For President, EUGENE V. DEBS. For Vice-President, JOB HARRIMAN.	BLANK COLUMN.
For Electors of President and Vice-President.	For Electors of President and Vice-President.	For Electors of President and Vice-President.	For Electors of President and Vice-President.	For Electors of President and Vice-President.	For Electors of President and Vice-President.
EDWARD H. BUTLER.	FREDERICK COOK.	CHARLES W. HOUSE.	FRANCIS E. BALDWIN.	CHARLES H. MATCHETT.	
FRANCIS B. MITCHELL.	ROBERT C. TITUS.	MAX FORKER.	WILLIAM W. SMITH.	CARL VOSS.	
SAMUEL J. UNGERHILL.	ISRAEL J. MERRITT.	CHRISTIAN BAREZ.	HENRY M. RANDALL.	JULIUS HALPERN.	
SAMUEL EDWLAND.	EDWIN KEMPTON.	CHARLES VOLLMER.	ISAAC K. FUNK.	VALENTINE L. WORTH	
MICHAEL J. DADY.	EDWARD RAUMANN.	JAMES IVERNE.	BENJAMIN REYNOLDS.	PETER E. BURROWES.	
CHARLES H. RUSSELL.	HENRY GEORGE, JR.	ANCIUS JARBOLD.	ROBERT T. STOKES.	ARTHUR R. MAYNARD	
JOHN RISSEL.	WILLIAM J. SEATON	CHARLES F. A. WALSH.	EDWARD A. SWEFEY, JR.	ALFRED B. PETTITT.	
HENRY C. FISCHER.	RUDOLPH CHARLES BACHER.	PETER FISHGER.	WILLIAM E. BROWN.	THOMAS PENDERGAST	
JOSEPH SIMONSON	JOHN E. WALSH.	JOHN KELLY.	ROBERT SCOTT.	FRANZ W. GASTEIGER.	
WILLIAM E. BILLINGS.	SAMUEL KAHN.	RICHARD GOULD	CHARLES W. MCLELLAN.	WILLIAM WOLLNIK.	
HERMAN J. KATZ.	MICHAEL H. WHALEN.	EPHRAIM SIFF.	TIMOTHY N. HOLDEN.	HENRY O. VITALIUS.	
FRANK VILFORD.	RICHARD FITZPATRICK.	JOHN MCGEROY.	GEORGE GETHIN.	HENRY O. JACKSON.	
SAMUEL S. KOENIG.	MICHAEL F. LYONS.	RICHARD HUNTER.	EMORY CUMMINGS.	JAMES W. FURNSIDE.	
ARTHUR P. STURGES.	HENRY HACHEMEISTER.	CHARLES REVENEY.	JOHN MCKEE.	ANTHONY J OESCHGER.	
JAMES YEREANCE.	JOHN J HARRINGTON.	CHARLES C. CRAWFORD	CHARLES E. LATIMER.	HENRY LUX.	
EMANUEL W. BLOOMINGDALE.	CHARLES FREDERICK WAETHING.	FREDERICK C. FULLING.	JEREMIAH T BROOKS.	HERMAN QUADE.	
WILLIAM SHERER.	JOHN MCQUADE.	LEON R. FILOUT.	ALBERT T. HULL.	HANS HEDRICH.	
FRANK V. MILLARD.	JOHN BRISBEN WALKER.	MAGNUS SVENSON	CLARENCE M. LYON	FRANK HERRMANN.	
CLARENCE LEXOW.	EDWARD STOCKER.	GEORGE AVELSON.	JAMES C. RIDER.	WILLIAM WINKELMAN	
JOHN W. CORDTS.	JOHN C. HOORNBEEK.	OWEN CARRAHER.	MITCHELL DOWNING.	RICHARD KITCHELT	
PETER MCCARTHY.	THOMAS H. CAMPION.	MATHEW STEEL.	NATHANIEL E POWERS.	WILLIAM LIPPERT	
SAMUEL L. MUNSON.	WILLIAM H. KEELER.	ALBERT W BROWER.	LEVI DEDRICK.	WILLIAM NEUMANN.	
WILLIAM S. C. WILEY.	ROBERT WEMPLE.	EDMUND BULLENT.	SPENCER BILLINGTON.	FRANZ SCHMITT.	
ROYAL NEWTON	CHARLES OSCAR MCREEDY.	CHRISTIAN MAHR.	WILLIAM H. PLACE	CHRISTIAN WARD	
WILLIAM T. O'NEIL.	HENRY E. BARNARD.	CHRISTIAN ROSSBACH.	JONATHAN E. ROAG.	JOHN H. BULLARD.	
DAVID M. ANDERSON.	LAURENCE CLANCY.	JAMES A. TRAINOR.	FREDERICK E. DEVENDORF	AMENZO H. BUTTERFIELD.	
ROBERT MACKINNON	ABRAM S. WEAVER.	GEORGE E. COFFIN.	WILLIAM C. GRAY.	CHARLES WILLIAMSON	
WILLIAM G. FIELDS.	THOMAS KERBY.	FRANK DANKHOFF.	EDWARD H. MILLER.	CHARLES H. WHEELER.	
RAMSOM B. TRUE.	GEORGE WELLS SALISBURY.	JAMES S. WHITE.	ARTHUR RAY.	CHARLES S. WILSON.	
ROBERT BUSHBY.	JAMES M. MILNE.	JOHN H. MORRIS.	JOHN W. BARRUS.	JACOB THISSEN.	
FRANKLIN D SHERWOOD.	HOSEA H. ROCKWELL.	ELMER HARRISON.	CASPER G. DECKER.	GEORGE C. JONES.	
CHARLES P. PRENTICE.	JAMES J. MAHONEY.	ROBERT WILL.	WILLIAM E. BOOTH.	JOSEPH C. OOLL.	
GEORGE EASTMAN.	JAMES E. CONLEY.	CHARLES A. RUBY.	BENJAMIN C. MONTGOMERY.	GEORGE L. WASHBURNE.	
CHRISTIAN KLINCK.	WILLIAM SIMON.	CHARLES NELSON	EDWIN PUZEY.	HERMAN REICH.	
GEORGE URBAN, JR.	JOHN MCCLURE WILEY.	JAMES W. SHARPE.	JOSEPH H. SHEARER.	JULIUS GERBER.	
HERBERT G. RICH.	DANIEL F. TOOMEY.	ROBERT JOHNSON.	JOHN NICHOLSON	ADOLPH JABLINOWSKI.	
For Governor, BENJAMIN B. ODELL, JR.	For Governor, JOHN B. STANCHFIELD.	For Governor, CHARLES H. CORREDAN.	For Governor, WILLIAM T. WARDWELL.	For Governor, BENJAMIN HANFORD.	For Governor,
For Lieutenant-Governor, TIMOTHY L. WOODRUFF	For Lieutenant-Governor, WILLIAM F. MACKEY.	For Lieutenant-Governor, LEANDER ARMSTRONG.	For Lieutenant-Governor, ALBERT J. RUMSEY.	For Lieutenant-Governor, WILLIAM BUTSCHER.	For Lieutenant-Governor,
For Secretary of State, JOHN T. MCDONOUGH.	For Secretary of State, JOHN T. NORTON.	For Secretary of State, JOSEPH H. SWEENY.	For Secretary of State, JOSEPH V. BAKER.	For Secretary of State, PHILIP JACKSON.	For Secretary of State,
For Comptroller, ERASTUS C. KNIGHT.	For Comptroller, EDWARD S. ATWATER.	For Comptroller, ALFRED C. KIRK.	For Comptroller, MASON N. WEED	For Comptroller, FRANK A. STEVERMAN	For Comptroller,
For Treasurer, JOHN F. JACKEL.	For Treasurer, JOHN BROWN JUDSON.	For Treasurer, JACOB E. ALEXANDER.	For Treasurer, FRED WILLIAM HEWETT.	For Treasurer, LEONARD F. ABBOTT.	For Treasurer,
For Attorney-General, JOHN C. DAVIES.	For Attorney-General, THOMAS F. CONWAY.	For Attorney-General, JUSTUS EBERT.	For Attorney-General, DEXTER D. DORN.	For Attorney-General, HENRY SLOEDDIN	For Attorney-General,
For State Engineer and Surveyor, EDWARD A. BOND.	For State Engineer and Surveyor, RUSSELL E. STUART.	For State Engineer and Surveyor, JOHN E. WALLACE.	For State Engineer and Surveyor, EMMETT F. SMITH.	For State Engineer and Surveyor, HENRY STAHL.	For State Engineer and Surveyor,
For Representative in Congress, GEORGE N. SOUTHWICK.	For Representative in Congress, MARTIN H. GLYNN.	For Representative in Congress, GEORGE H. STEVENSON	For Representative in Congress, WM. M. GODDARD.		For Representative in Congress,
For Senator, JAMES A. MCEWAN	For Senator, CURTIS N. DOUGLAS.	For Senator, WILLIAM MURDOCH.	For Senator, ISAAC S. ALBRIGHT.		For Senator,
For Sheriff, EDWARD MCCREARY.	For Sheriff, MICHAEL F. BULLARD.	For Sheriff, RICHARD D. COGN -	For Sheriff, HENRY S. MOAK.		For Sheriff,
For Coroner, THOMAS CLAGHORN	For Coroner, MICHAEL T. SMITH.	For Coroner, MARCUS HIRSCHFELD	For Coroner, JNO. H. FITCH.		For Coroner,
For Member of Assembly, THOMAS G. ROSE.	For Member of Assembly, JOHN F. GORMAN	For Member of Assembly, JOHN F. GORNEY.	For Member of Assembly, J. W. F. PIDMORE.		For Member of Assembly,

INDEPENDENT NOMINATIONS.

THE ELECTOR MAY WRITE IN THE COLUMN BELOW, UNDER THE TITLE OF THE OFFICE THE NAME OF ANY PERSON WHOSE NAME IS NOT PRINTED UPON THE BALLOT, FOR WHOM HE DESIRES TO VOTE.

AN AUSTRALIAN BALLOT

emblem, which can be recognized by a man who cannot read.

Another method of voting now making headway in the country is by machines. Several mechanisms have been perfected, under which a man may vote by going into a booth and pulling a lot of knobs, one for each candidate. The advantage is the quickness of the system, for the moment the ballot is completed it is also cast; and the machines are also self-counting, so that at the end of the poll the total vote for each name on the ballot is shown on dials; the system thus obviates errors and possible frauds in counting complicated votes. Voting-machines make their way slowly, partly because of their expense; partly because, if they get out of order, it is difficult to keep up the election; and partly because they make unnecessary the force of election officers who are accustomed to get a large day's wage.

In England and in the colonies, elections often lasted several days or a week; and for many years after 1787 the choice of presidential electors and representatives took place on different days in different states. All the states have now come to a system of one single day. Since 1845 all the states are by act of Congress compelled to vote for presidential electors on the Tuesday after the first Monday in November; and most of them put their state elections on that day. Since 1872 that is also the normal day for electing members of Congress.

The deposit of ballots is subject to many frauds. "Repeating" is voting more than once in the same or in different precincts. The "marrow-fat" fraud consists in a voter's putting in more than one ballot, while the clerk puts down fictitious names to cover the extra ballots. The "tissue ballot" system allows a voter to put in a handful of tickets at once. Sometimes ballot-boxes have votes in them before the voting begins, and for that reason New York formerly used glass ballot-boxes. Previous to the Australian ballot, in some states judges were allowed to count the ballots from time to time during the day, a process which easily lent itself to fraud.

The result of the election will still be vitiated unless an accurate and fair count is held; and in no part of the representative system has there been so much corruption. Voting-machines of course make counts by tellers unnecessary; but the usual system is to have the election officials, — usually a supervisor and clerks, — begin counting as soon as the election is over. The so-called "straight party tickets" are put in bundles and counted, each candidate receiving his credit; there are numerous "split tickets," and every ballot has to be carefully examined; the numbers are then tabulated and reported to some state authority. In a hotly-contested election the returns are at once given to the newspapers, and within six hours after the closing of the polls on the day of the election the result is often known.

Sometimes elections are very close: a governor of Massachusetts was once elected by a majority of one; and in the best systems the ballots are preserved until a recount can be had. One difficulty is that the Australian ballots are numbered, so that it is possible to discover a ballot cast by a particular person; and recounts are sometimes demanded for no other purpose. Many states have very careful statutes, describing the count of votes and fixing heavy penalties for falsifications. New York City, owing to the efforts of Henry George, has one of the best systems of counting votes known in the United States.

38. Minority and Proportional Representation.

To learn the will of the people is easy, if there is only one office to fill and only two candidates for the place; but in many elections there are more than two candidates for each office: a man who prefers A and if he cannot be elected prefers B, has no opportunity for making a second choice count. In states where in all the sections one party has a preponderance, a minority numbering many thousands may have few or no members in the legislature. Thus in Vermont, where the Democrats are about one fifth of the voters, they sometimes have not a single member in the legislature.

To meet these conditions, various schemes of minority and proportional representation have been worked out. In the minority system each voter has more than one vote, and may distribute as he likes: in Illinois, for example, three members are chosen to the legislature from each district, and every voter has three votes; if the minority all "plump" for one man, he is practically certain to be elected, and the result is that in the legislature the minority gets about one third of the members. This method has the striking disadvantage that if only two candidates are nominated by the majority, and one by the minority, the three are almost certain of election, so that it is not necessary to put forward strong candidates.

Proportional representation in its many forms aims to take account of second choices, by taking from the candidate having the highest number of votes all those above a majority, and giving them to some other person who shall be designated by the voter. Of course until all the vote is assembled, canvassed, and calculated, you do not know who is elected. In Switzerland, under the system, it has been found that by judicious nomination the election of all but a few candidates is certain beforehand. Underlying all these schemes is the assumption that a man is not represented in the legislature unless he has voted for the sitting member; in practice, members habitually represent and consult constituents from the minority, and one of the greatest elements of strength in a public man is that he has friends outside his own party. At present neither the minority nor the proportional system seems to make headway in the United States.

The original idea of American elections was that everybody must get a clear majority. At present, almost everywhere in the United States, a plurality elects, with the result that the person designated may have not more than one third of the total vote; and conceivably the friends of both the other two candidates would have united on one to defeat the successful man. Nevertheless, in nine cases out of ten, the man who gets the plurality would have had a majority if there had been

only two candidates; and the system is instantaneous and so convenient that it is applied even to the choice of the group of presidential electors from a particular state. The only important elections in which an absolute majority is still required are in a few states where the legislature chooses the governor if no candidate has the proper majority; and in the choice of senator of the United States, which is held by a legislative session, in which it is easy to get a succession of ballots.

39. Popular Votes on Constitutional and Legislative Questions.

The primary idea of elections in America is that they are held to select officers of government, including all heads of communities (except the president of the United States) and many other executive and judicial officers, state, municipal, and local. Especially important and prized is the popular choice of all members of legislative bodies (except United States senators), because they frame the laws.

As soon as communities get beyond the point of town-meeting or county assembly, where pros and cons can be discussed, it is impossible for a large number of people to arrange the details of legislation, and to be sure that one clause agrees with another or one law with another. Nevertheless, almost from the beginning of our present government, popular votes have been taken on the most important of all forms of legislation, — namely, new constitutions and constitutional amendments, and now the method is in various ways extending to ordinary legislation.

1. The Swiss, whose government closely resembles that of the United States, have adopted our method of popular vote on constitutions, and have gone far beyond us by taking the opinion of the people on specific laws. In some of the cantons of Switzerland, every statute, after going through the legislative council, is subject to a special vote of the people by what is called the "compulsory referendum"; and in some cases the law is voted upon by sections, so that a part may be passed and the rest rejected. This system undermines the legislature,

by making it simply a body which prepares the details of a measure but can take no responsibility for its enactment.

2. A second system is the "optional referendum," which is even more widely spread in Switzerland and has taken root in America: a law duly passed goes into force, unless a specified number of voters petition that it be submitted to a popular vote. This is practically a veto power, which is not invoked on most laws, and when invoked perhaps results in approval of the measure.

3. Popular votes are applied in the United States in two ways. (1) Under state statutes, on laws relating only to a particular municipality or locality; such as a city charter, or a new system of popular improvement, or waterworks, or street viaducts, or subscriptions to railroads: thus in 1894 the question of uniting the cities of New York and Brooklyn and the smaller surrounding places was submitted to a general popular vote. (2) Under general statutes applying to groups of local governments, — as, for instance, that no local indebtedness shall be incurred for specified objects without the consent of the people. In states which have the local-option system of liquor-selling, each locality votes for itself, from period to period, whether it will or will not exercise the privilege of prohibiting the sale of liquor within its limits.

Votes may be taken, under special or general acts, on a great variety of subjects, — as the foundation of schools, the improvement of roads, fencing in cattle, taking oysters with scrapes or dredges, the use of voting machines, and a hundred other questions.

4. The Americans are less accustomed to popular votes on state statutes of general obligation. Nevertheless, beginning about 1842, states began to put into the constitution provisions against the incurring of state debt except by popular vote. From 1850 on, popular elections have been held from time to time on the location of state capitols and other public buildings; and the question of the extension of the suffrage, especially of woman suffrage, has repeatedly been subjected to the optional referendum.

5. The Swiss have a third form of popular vote by which statutes that have gone through the legislative forms may be submitted to popular vote on the request of a certain number of citizens. This system has been adopted by a few states: in South Dakota, by a constitutional amendment of 1898, one twentieth of the number of voters at the last previous general election may demand the submission to popular vote of any statute which has recently passed the legislature; in Nebraska, one fifteenth of the state voters may demand a state referendum, and one fifteenth of the local voters may demand local referendum on local ordinances; in Iowa and California the referendum may also be demanded in some of the local governments.

In Switzerland there is also a national referendum on petition of 30,000 voters, who may compel about 400,000 other voters to come up and express their will. The tendency is to reject the statute on referendum, but the same measure is sometimes approved on a second popular vote. In the United States a referendum on acts of Congress would be very difficult and clumsy, and would practically destroy the influence of the Senate.

6. A sixth kind of popular vote is called the initiative, — a system by which a given number of voters may on petition require the legislature to pass a statute of a designated kind and submit it to popular vote, or may actually draw up a bill in detail (the so-called "formulative initiative") and demand a vote upon it. In 1891 this system was extended to the Swiss national government; but in the three cases in which it was tried down to 1898, the proposed bill was rejected by the people. So far, this system has been introduced in the United States only in South Dakota, Utah, and Oregon; on some local questions in some states, a part of the voters may require the holding of an election to decide such questions as the site of a county seat, the fencing in of live stock, the establishment of high schools. In Connecticut twenty-five legal voters may insist on a town meeting to vote on the sale of liquor; in

Utah fifty voters in a small town may demand a vote on a free public library; in South Dakota, Nebraska, and the city of San Francisco a specified number of electors may propose a measure on any subject, which must be submitted to popular vote. In states having no such system the same result can be reached by a numerously-signed petition to the state legislature.

What are the advantages and disadvantages of popular legislation? The advantages plainly are that the people may force the hand of apathetic or improperly-influenced legislatures, by upsetting legislation which does not reflect the sentiment of the community; the referendum and initiative are both intended to arouse public sentiment by giving the voters questions of real practical importance to vote upon; again the local referendum adapts general legislation to the needs of the popular community. The objections are: (1) People do not take an interest in such elections: in Switzerland 570,000 votes were cast in 1898 on a law for the nationalization of railways; but the year previous, on a constitutional amendment relative to forests, there were only 240,000 votes. In some of the cantons of Switzerland, where legislative questions come up very frequently, many people get so tired of making up their minds that they will not vote; and when a statute was passed by Zurich fining voters who did not appear on election day, the result was simply the casting of thousands of blank ballots. (2) The referendum destroys the sense of responsibility of the legislatures and of governors, and hence of those who vote for legislators. (3) Complicated and balanced statutes, involving economic and social questions, are hardly to be framed or voted upon by a simple yes or no vote.

Nevertheless, there remains the fact that a legislature which unexpectedly develops corruption, or which is subject to irresponsible chieftains, may be called to order by a popular vote; and that such a system relieves the serious burden upon good citizens of watching legislation in order to stop it before it goes through the legislature.

40. Exercise of the Suffrage.

A very important question with reference to the suffrage is the actual degree of participation of qualified voters. In a country like the United States, with a continual stream of immigration, a large number of adult men cannot legally vote because they cannot legally be enrolled till they have lived five years in the country. In 1900, according to the census, there were in the states of the United States 20,800,000 men of voting age; of these 2,150,000 were unnaturalized foreigners, part of them in the country too short a time to be naturalized, the rest not sufficiently interested to acquire citizenship. That leaves 18,650,000 presumptive voters in addition to perhaps 150,000 allowed to vote in the states before being naturalized. The total vote cast in the presidential election of that year was 13,960,000 or 74 per cent of the possible vote; the proportion in 1840 was 78 per cent; in 1860, 80 per cent; in 1880, 81 per cent.

What has become of the rest of the voters? Property qualifications have now been abandoned, but the tax qualification cuts off perhaps one twentieth of all the votes in the states where it is applied. Moral and intellectual limitations disqualify over 300,000 men, — namely, prisoners in cells who had committed infamous crimes, insane people, and paupers. The educational qualifications of Massachusetts and Connecticut actually cut out only a few thousand, but the apparently similar qualifications in the Southern states disfranchise several hundred thousand. Change of residence shortly before an election causes the temporary disfranchisement of perhaps one fiftieth of the voters.

Making deductions for all these causes we account for 1,700,000 out of the 4,840,000 stay-at-homes; but a further deduction must reasonably be made for accidental causes. About 600,000 men are over seventy years of age, and many of them are physically unable to get out. Most able-bodied men average one week of sickness every year, which cuts out

one fiftieth of the voters below seventy. Various causes take perhaps one in fifty of the voters away from home on election day. The ordinary accidents of life, sudden calls, forgetfulness, account for another group. Of the men who take the trouble to register in the city of New York, about 10 per cent do not go to the polls; that is, about 4,000,000 of the 4,840,000 abstentions can be accounted for without imputing neglect.

In the South the vote is reduced by the general prevention of the negro vote either by positive laws or by irregular practices. In Southern states with a large rural population, like Tennessee and Arkansas, the proportion of voters is very small because of the physical difficulty in getting to the polls. In the closely-populated Northern states a presidential election will bring out as many as 90 per cent of the actual voters; and there have been instances where a state cast more votes than there were known voters. In a presidential election, the number of people who stay away because they are not interested to vote is very small, smaller than in most stockholder or club meetings: the vote upon the Massachusetts constitution of 1780 was about one twenty-fifth of the population; in the presidential election of 1880 it was about one sixth of the population.

In state and local elections abstention is a more serious evil: thus in New York City in 1888 the vote was 18 per cent of the population; in the local election of 1890, under 12 per cent; in the election for governor in 1891, about 13 per cent. In general, local elections call out the smallest vote; but the intense public interest in the government of great cities caused in 1901 a vote in New York City only 25,000 less than in 1900. In cities like Cleveland and Chicago and Philadelphia and Detroit the vote on municipal elections is now very heavy.

Whenever in really contested elections the abstentions are numerous, the apparent wilful neglect of voters is often a willingness to accept conditions as they are: if the vote at a municipal election is half that at a presidential election, it is

because people are willing to take their local government as it comes; by neglecting to vote, they practically admit that they are reasonably satisfied. In some cases a small vote is really intended to be a heavy and most effective rebuke on a party machine. Thus in 1882 the vote for governor in New York was very small, because the voters of one party desired to rebuke what they considered the forcing of a candidate by the administration; actually about 200,000 party voters refused to come out, and thus they gave a majority of 192,000 to the opposing candidate, who thereby won such *éclat* that two years later he was nominated and elected president.

41. Reform of Electoral Methods.

From the preceding discussion it will be seen that our electoral system is by no means perfect: we have some things to learn from the experience of other countries, and much from our own. First of all, we have no adequate system for ascertaining and recording the qualifications of voters, because of a painful lack of a proper system of registering births and deaths. Thousands of young men vote before they are twenty-one, because it is hard legally to establish their age; thousands of names of dead men are kept on voting lists because the registry of deaths is not so accurate that it can be depended upon for the purification of the lists. The second need is thorough registration: Americans move freely from state to state and from city to city, and hundreds of thousands of legal voters are little known to their fellows. A few states absolutely prohibit registration; many states have not a sufficient system; and the practice of continuous registration is in some cases used to cover fictitious voters. The third necessity is for a proper method of voting, and this is the reform which has most headway in the Union. The Australian ballot ought to be extended to the remaining five states, for it requires intelligence: the provisions of some of the state laws that an illiterate voter may have his vote marked for him by a friend or an official, is really the striking-off of a valuable educational qualification.

The English Corrupt Practices Prevention Act of 1883 strikes at one evil — the direct and indirect corruption of the voter — by requiring every candidate for office to file a sworn statement of the amount expended by him or in his behalf in the election, whether he wins or loses. This plan is followed in thirteen states.

In most states new legislation is necessary to protect the count of votes; the actual process should be conducted with more care and sobriety. Everywhere, as in the best states at present, solicitation of votes in and about the polling-places should be absolutely prohibited. Ballot-boxes should be so constructed as to make it impossible to tamper with them before voting begins. The count of votes should everywhere be made in the presence of a number of persons, should be immediately announced, and should be subject to verification and to recount. In many states more thorough legislation is necessary to punish the offence of falsifying the vote.

The fate of republican government depends upon the ability of the people to express their will without interference or fraud. To stuff the registration lists with fictitious names, to miscount the votes, to throw out legal votes on small technicalities, to accept ballots made up in defiance of the provisions of the law, — these are betrayals of republican government in the hands of its friends.

Behind all methods of voting, however, must stand an intelligent public interest in elections. As will be seen in the next chapter, one of the main reasons for apathy in elections, especially on local questions, is the small influence of the average voter in the nomination of candidates. Our present remedies are outright bolting, voting for some men on the other ticket, or simply scratching off objectionable men on one's own ticket. The Australian ballot is a great step because it gives opportunity for thoughtful voting; but the thoughtful voter must not only cast his ballot, he must make up his mind that if necessary he will sacrifice time and convenience to see that other people's ballots are properly cast and properly counted.

CHAPTER V.

THE PARTY AND THE MACHINE.

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the policy of the government, or to hold fast to what they have acquired. The moment that two individuals habitually consult together and act together on matters of government, we have the nucleus of a political party; and such association of men of like minds is the necessary condition of popular government.

In England, distinct political parties began about the time of the struggle between the Cavaliers and the Roundheads, in the Stuart period. After the Revolution of 1688, the adherents of the deposed Stuarts were called Tories, but until a few years before the Revolution their rivals the Whigs practically controlled the government. King George III in 1760 threw in his lot with the Tories, and they were in power most of the time till the end of the Revolutionary War.

In the colonies, parties sprang up as soon as representative government was established; but the main centre of political difficulty was the governor's authority. The royal governors were always in hot water with their people over questions of taxation, of land system, of military defence, and so on; and the parties were in essence the governors' friends and the opposition. There were no general American parties until 1765, when the friends and opponents of the Stamp Act became sharply divided. At the beginning of the Revolution, in every colony the patriot party was forcibly contested by the royalists, commonly called Tories. In every colony the patriots got possession of the state government, organized it, and framed a new constitution; and the Tories absolutely disappeared as a political power.

The first development of national parties was the division over the ratification of the constitution in 1787. Throughout the country, the friends of the constitution organized as "Federalists" and stood together: the Antifederalist opponents of the constitution kept up the fight as long as they could, but within two years their party absolutely vanished. The general elements of separation, however, were speedily crystallized into two great recognized political parties, the Federalists

and the Antifederalists. The Federalists included most of the commercial and industrial interests, the ship-owners and manufacturers; and the general principle of the party was submission to intelligent leadership for the protection of property and the maintenance of order. The Antifederalists, for a time called Democrats, under Jefferson's guidance speedily took the name of Republicans, and had for their basal principle the rights of the individual and the maintenance of personal liberty and independence.

The Federal party lost the presidency in 1801, and by 1822 died out in the states. The Republicans, now frequently called Democratic Republicans, were in full control, took over many of the former Federalist principles, and attracted many old Federalists, especially John Quincy Adams. From about 1816 to 1832 there were no distinct party issues; men divided on personal grounds, and on such issues as the anti-masonic agitation. This period, the earlier part of which has been called the Era of Good Feeling, was really a period of bitterness and rancor and legislative ineptitude. It was terminated between 1829 and 1832 by Andrew Jackson, who hewed out a new set of political principles: he extended the ideas of Jefferson to cover opposition to a national bank, high tariff, and national internal improvements. Gradually Jackson's friends and supporters took the name of the Democratic party; Jackson's opponents concentrated and took the name of the Whig party, and from 1840 to 1852 those two parties alternated in control of the presidency and of Congress.

Up to 1840, no third party had been long-lived; but the opponents of slavery founded the so-called "Liberty" party, later the Free Soil party, which in 1840 polled 7,000 votes; in 1844, about 60,000; in 1848, 300,000. In 1852, the Whig party broke up on the question of slavery; in 1856, the Anti-slavery party all but elected its president; and in 1860 that party elected Abraham Lincoln president.

During and after the Civil War, the Republican party stood at the same time for the vast interests of capital and as the

great defender of human liberty. The Democratic party still stood on its old ground for as little government as possible. In 1884, a Democratic president was elected for the first time since 1856. The various third parties which had been formed just after the Civil War died out: the issue was distinctly between the Republicans and the Democrats. There was again an alternation: in 1880 a Republican, Mr. Garfield; in 1884, a Democrat, Mr. Cleveland; in 1888, a Republican, Mr. Harrison; in 1892, a Democrat, Mr. Cleveland again; in 1896 a Republican, Mr. McKinley; and at this day the two parties which have confronted each other ever since the Civil War are still strong, vigorous, well organized, and constantly opposing each other in the national, state, and local governments.

44. Party Organization and Party Committees.

Parties do not conduct themselves, they require careful and intelligent direction by individuals; and those individuals, the party managers, tend to take upon themselves all the party functions, — designation of candidates, management of campaigns, conduct of elections, statement of party principles, and adoption of legislative policy.

Until recently a party was in the eyes of the law simply a voluntary association of individuals, like a club or a church: no political party is incorporated; no party as such can make contracts, incur debts, or enforce its rights by suit; men join a party by voting with it; men retire from it by refusing to vote with it. Nevertheless, this nominally free and open organization has become one of the most permanent, powerful, and effective forces in the whole country.

How does a party maintain its hold upon its members? To a very large degree the sons of party men will vote their fathers' ticket. Sometimes the "first voters" are an element of uncertainty, especially when new questions come up. Parties are not much strengthened by men's changing permanently from other living organizations, although in 1862 many Demo-

crats became Republicans and in 1872 and 1884 large numbers of former Republicans became Democrats. Emigrants much affect the complexion of parties, and there is a kind of race choice: Irishmen prefer the Democratic party; Germans are more likely to choose the Republican party.

Nevertheless, there is always a class of voters who do not count themselves as party men, and vote on one side or the other according as the principles of each attract them; and in hot campaigns, like those of 1884 and 1896, thousands of voters pass for the time from one column to the other. Against such defection the party managers are always on the watch, for a party, like an army, can accomplish its work only by joint action of its members; yet it is an army which melts away without possibility of court martial, or sits in its tents if it does not like the war. Hence successful party managers must learn the temper of their followers, and must placate them by promising popular measures and by nominating acceptable candidates. To the party manager, the good man is he who always votes the straight party ticket: it is thought contrary to party honor to strike off a single name from the regular list of nominations; a man who is known even once to have voted for a candidate of the other party, especially in a national election, is suspected, and even though he comes back to the fold perhaps may never receive a nomination.

In the management of parties, the main instrument is the standing party committee. National parties have a committee of one member from each state, the chairman of which is in a position of enormous influence. The national committee men are designated every year by the delegation of their states at the national convention, but have the right to fill vacancies and to select an executive committee which does most of the work. The state committees have the power to fix the time and place for the meeting of state conventions, and in many cases prepare the work of those conventions in advance. They even draw up and discuss platforms beforehand. Every

city has a similar committee, positions on which are often held for many years.

Quiet men, little known in public life, serve on these committees, and make the prime decisions on political questions. One of their functions is to raise and apportion funds for campaign purposes; they send out appeals to well-to-do members of the party; wherever they can, they also assess the office-holders of the party; but since the civil service act of 1883, this practice is forbidden by law, so far as federal officials are concerned. In many states they habitually require great corporations, especially traction companies, to pay large sums to the party treasury, the consideration being a tacit understanding that the party will be pleasant when the corporation wishes favors. Some corporations subscribe to the campaign fund of both parties, so that they may always have a friend at court.

When the campaign is once under way, a sub-committee or a separate campaign committee is appointed, which arranges for political meetings, assigns speakers, and in general acts as counsellor and protector for the local political organizations. National committees now make much of the literary department: in 1896 the republican committee had for weeks a large building in Chicago, and sent out daily many tons of mail, amounting to a total of several million pieces. Such documents may be translated and printed in a dozen different languages.

45. The Caucus.

In small democratic communities like the New England towns or the Southern counties, it is easy for a man who wants to be elected to an office to make his desires known: to this day notice is occasionally given in the public press that so and so is a candidate for such an office. Then, in a town of ten thousand inhabitants, all the intelligent people know all the principal men of the place by name or on sight. When, however, we take a large community like a state or a municipality,

it is likely that at a given election not one voter in twenty will know personally more than one or two of the candidates for whom he is voting; and in a city ward with a population of ten thousand, successful men of great worth may hardly be known by name to their next-door neighbors. To make democracy work under such conditions, the voter must have some principle of guidance in selecting his candidates; and he depends on the nomination of a representative party candidate.

Party nominations are usually made by one of two organizations, — the primary convention, often called a caucus, and the nominating delegate convention. The primary election is intended to be a kind of town-meeting for the members of the party within a limited territorial area; it is supposed that they know each other, and that they will recognize names submitted to them for local nominations. The primary also chooses delegates to county or state conventions, and thus indirectly to national conventions: if the friends of a statesman wish to make him president, they must in the end secure support in the primaries in thousands of places all over the country. Hence it is apparent that to take part in some primary election is the duty of every good citizen; but in many states membership in the caucus is given, not to all the voters of the party, but to a select coterie who fill their own vacancies. This was the case in New York City until a few years ago: the other voters simply stood aside and had to accept what was put before them.

The first difficulty in a caucus is to determine who shall take part. In many cases caucuses are packed by voters of the other party, who thus help nominate the candidates of their rivals, and naturally are not eager that the best man shall be nominated; and there have been comical cases in which, in the same city, Democrats have practically dictated Republican nominations, and Republicans have controlled Democratic caucuses.

Many states, Massachusetts being the most prominent, have enacted caucus laws, which provide that every member of a

party shall be allowed to attend his caucus; which forbid any one to attend who does not show that he is an adherent to the party faith; and which put the officers of the caucus under legal responsibility to preside justly, to count the votes accurately, and to give the minority a fair chance. The effect of such laws is wider than appears upon the face, for they make the caucus a part of the machinery of government: the state has to take legislative notice of the fact that there are political parties; it assumes the responsibility of deciding who is really a member of this or that political party, and which of two rival organizations is "regular."

Within the caucuses there are practical difficulties. (1) They are often noisy, disagreeable, and protracted. (2) In a very large proportion of cases a "slate" is made up by men who can control large bodies of votes (a "slate" is a list of persons selected beforehand to be designated by the meeting). (3) All public meetings must in the last resort depend upon the honesty of the chairman, — if he says the ayes have it when the noes really have it, the ayes win, and hence a corrupt chairman may defeat the desires of a plain majority. (4) The caucus appoints delegates to the county, city, district, or state conventions: where the caucuses are honestly carried on, these delegates ought to represent the majority opinion within a party; but, if dishonestly managed, a small minority of the party voters may succeed in sending to the convention enough delegates to nominate their candidates. The public-spirited voter finds it hard to influence caucus action.

46. The Nominating Convention.

The other machinery for selecting candidates is the nominating convention, which first appeared in 1788 in Pennsylvania. For many years it was an arena where the strength of rival candidates was tested, and this is still the case in the national convention; but the local conventions, and even some state conventions, are now in many cases simply a cut-and-dried affair, to ratify a result reached beforehand by the party

leaders. In the first place, a very common method is to "instruct" the delegates from the primaries as to the persons they shall vote for: this means that, from the first, the convention is not a body of persons to deliberate and select the best man, but a set of ambassadors from the localities. Usually the conventions are large; in Massachusetts as many as 2,200 delegates are elected every year to each of the party state conventions. Before assembling, the party committee prepares a list of officers of the convention, including a man designated for the permanent president; and as soon as elected he makes a speech setting forth the party principles.

The difficulty that most often disturbs the state convention is the appearance of rival delegations, each claiming to be the rightful representative of the voters of a particular district. A committee on credentials is appointed to consider such cases, and makes a report; sometimes the nomination depends upon the seating or the unseating of a particular delegation. The natural tendency of the party leaders is to accept the delegation which is "regular," which represents "the organization," — that is, which has the support of the men who have been accustomed to take charge of party matters in the district from which the delegation comes and are in relation with the state committee. A method very frequently followed is to admit both delegations, each casting half the vote from the district.

Sometimes local and even state conventions get into an uproar. In September, 1896, on the day before a Massachusetts convention, a number of delegates and contesting delegates held a meeting in the hall where the convention was to occur, and resolved to occupy the room till the convention assembled the next day. When the time came for the convention, therefore, about 500 delegates were already in their seats; the remaining delegates were crowded outside, and the police declined to open the doors, so that the members in the hall proceeded to organize a convention and to nominate a candidate. Meanwhile the state committee had called the rest of the convention in another hall, where they duly organized and

made their nomination for governor. The result was two certificates of nominations sent to the state government; and an official election commission was obliged to decide which convention had the regular party nomination.

The state conventions not only nominate state officers, but also designate members of the state committee, and often delegates to the national convention; and in addition they adopt a platform of party principles. These state platforms are usually not much regarded except in times of political unrest, when the attitude of a state convention may presage the attitude of the voters of the state on questions of public policy. Wherever the party convention has degenerated into a cut-and-dried preconcert of a few party managers who make up a ticket, such a convention is simply a mask for a personal and despotic system of nominations, and might well be omitted altogether.

47. National Conventions.

The enthusiast who loves a fight is still gratified by the national party convention, which is subject to interesting waves of excitement, and the result of which is as yet uncontrolled by any previous arrangement. The original method of designating candidates for national office was by a caucus of the party members of Congress at the seat of government. Such caucuses designated the party candidates in 1796 and 1800; and down to 1820 the caucus nominations were usually taken up by the country: the difficulty was that a district represented by Federalists had no representation in the Republican caucus; and there was a general feeling that the work of the caucus was selfish and partisan. It broke down in 1824.

The next method of presidential nomination was by state legislatures, of which a conspicuous example was the setting up of Jackson by the legislature of Tennessee in 1822, and again in 1825 after his first defeat. This system was obviously clumsy, and did not represent the whole country. Hence it was superseded by a national delegate convention, made possible by the improvements in transportation, by steamers, and

later by railroads: 1840 is the first year in which both the two great parties had regular conventions, nominated candidates, and drew up platforms. From that time on, conventions have regularly been held by the two great parties, and frequently by third parties.

Until 1860 the national conventions were held in small halls, sometimes in small cities; the Chicago (Republican) convention of 1860 was the first to be held in a great auditorium, intended to give ten thousand people a chance to see the performance. The conventions are now always held in a large city, and last several days. The result of the hippodrome system is of course that members of conventions consciously or unconsciously talk and vote with a view to the galleries, and the galleries do all they can to affect the minds of the delegates. The usual membership is two for each congressional district, four at large from each state, and six from each territory, making a total of 994. It is customary to appoint a large number of "alternates," who have the right of attending, and for whom seats must be found; and the press is amply accommodated. The organization of the national convention is like that of state conventions: the meeting is called to order by a temporary chairman designated by the national committee, who makes a speech; a permanent chairman is then elected, and a committee on credentials is appointed; in case of serious contests no work can be done till that committee reports.

A large number of delegates always come from states which cannot possiby cast any electoral votes for the candidate of the convention and are little controlled by public opinion; delegates from such states sometimes run out of money if the convention is prolonged, and their expenses are paid for them by the friend of some candidate. With all these drawbacks, the national conventions are a reasonable reflex of the public sentiment of the parties. The platform is sometimes drawn up before the nominations, especially if it is desired to lay down a principle which shall bind some particular candidate;

wherever there is a great dissension in the party, it is likely to be expressed in the debate on the platform.

The making of the platform requires the greatest skill if there is a division of opinion within the party. The Democratic party has a habit of reiterating its platforms of previous years, with additions; other parties usually make up an entirely new document. In 1896 the drafting of a gold plank in the platform of the Republican convention at St. Louis was so important that three or four men have contended for the honor of having framed it. A frequent form of statement on serious questions is the so-called "straddle," — that is, a declaration which means anything to anybody. Nevertheless, the party platform is accepted throughout the country as a statement of the principles and intentions of the party, and great use is made of it in the campaign.

In a large convention, only a few persons who have been designated beforehand can be allowed to speak on any question. At Chicago in 1896, Mr. Bryan, who had already been selected by a large fraction of the Democratic party as their candidate, came forward and made a speech which at once stamped him as a leader and greatly aided him to get the nomination.

When the organization is complete and the question of contesting delegations settled, and the platform is out of the way, the next thing is the nomination of the candidates. The different aspirants for the suffrages of the convention are put forward in elaborate speeches by their friends, speeches which sometimes unexpectedly furnish a war-cry; as in the case where an orator declared that "we love our candidate for the enemies he has made"; or another who put in nomination "gifted, gallant, glorious Blaine," "plumed knight," "our Henry of Navarre." Ever since 1860 it has been the habit of the spectators to express their sentiment by uproarious applause, when the name of the person brought before the convention is first mentioned: thus, in 1884, the mention of the name of Mr. Blaine brought out twenty minutes of continuous applause,

wave after wave. The effect of this participation by the galleries is doubtful; it probably makes no more impression on the nerves of the party managers than the cries of the spectators on an experienced base-ball player.

After the nomination the candidate is notified by a committee, and makes a speech or writes a brief letter; later on there is sometimes a mass-meeting, at which he makes a longer speech; and he eventually writes a careful letter of acceptance, in which he states his principles and expounds the party platform.

Although it is quite possible in state conventions to nominate men who are unknown to a large majority of the delegates, the national conventions almost universally designate men of reputation and character. People have such a sense of the importance of the office of president, that, although weak men have sometimes been nominated and even elected, no man has ever been successful in a presidential election who has not had a previous experience of public life and who was not well known in some parts of the country. Even Franklin Pierce had been in Congress and had served in the Mexican War.

48. The Machine and the Boss.

Those persons, often very few in number, who control the regular routine of party action, take upon themselves the name of "the organization"; by their opponents, within or without their party, they are habitually called "the machine." There is nothing vicious in party organization, there is nothing strange or immoral in intelligent acceptance of the management of a few persons; every one is aware that charitable and social organizations of all kinds are set in motion by a few minds. "The organization" must undertake the detail of the necessary and perfectly legitimate work of keeping track of the voters of the party, notifying them of caucuses and elections, sending out campaign literature, providing halls and speakers for campaigns. The organization becomes dangerous when it passes beyond initiative and suggestion and routine work, and

assumes the sole right to select persons for party nomination; or when, by preventing a fair expression of the will of the party voters, it forces unfit candidates upon the ticket; or when, going to the furthest extreme, it arranges with the worst elements in the other party for a division of the public employments and public contracts for private benefit. "The political machine," like every other machine, works good or bad results according to the will of the operator.

Throughout the United States, in the cities, towns, villages, and rural communities will be found conclaves of politicians who are recognized, often for years together, as the men to be consulted by the party chieftains; and wherever politics are too highly organized, especially in the cities, these subordinates become the agents for the exercise of arbitrary party management. The most honest and straightforward political leaders, conducting elections with perfect fairness, must nevertheless depend for their political success upon voters; and unless they carry elections, at least occasionally, their party has very little function or significance. Hence for the support of the organization it is necessary that the voters be known and be brought to their duty; and the subordinates, who frequently occupy small offices, are expected to "hold the vote." In most country districts, they simply keep the men of their party up to the mark; but in cities of every size, and particularly the largest, such leaders gradually accumulate a following which will vote any ticket at the orders of the chieftain. Thus is established in American politics something very like the old feudal system in European government: the local man, often called a "heeler," has his body of adherents, whom he holds in service at the call of his superior; that superior in turn must hold his collection of votes at the service of the chieftain; in primaries and conventions also the heeler and the district leader often absolutely control large blocks of votes. Hence, in order to get a nomination, the candidate must somehow secure the support of the party chieftains.

So far the political voter may still be loyal to his great party

leaders, just as the vassal of a lord was nominally the subject of his king; but in very highly-organized political parties, the stock voter will accept the orders of his suzerain to vote against his party. This makes possible the political "deal," which means that the heads of rival parties agree each to support some of the candidates of the other's ticket, thus rendering the election of the least desirable men almost a certainty. Republican government disappears when the vote can be transferred as a chattel from one voting camp into another.

How does the machine keep its hold upon the voters, many of whom are only dimly conscious of its terrible power? Partly by punishments, especially by the marking for exclusion from all future office and advantages of any man who shows too much independence; much more by positive benefits. It must not be supposed that even in the most corrupt city governments the majority of the voters are simply tools. They are kept to their party adherence by a conviction that adherence brings them something worth having: first of all and most important, the chance of being elected or appointed to an office carrying with it dignity, power, and salary; in the second place, aid and protection in business, lawful or unlawful; in the third place, positive and unceasing relief to the wants of poor people. Thousands are the tons of coal and the barrels of flour furnished to the poor and suffering by political leaders, who often feel a genuine friendship and interest in their people; and it is not in human nature for the recipients of such favors to vote against their benefactor.

The inevitable tendency of a highly-organized machine is to bring each organization into the control of a single man, who is popularly called "the boss." Again, the principle of the political leadership of a man of power is not harmful: it is as old as popular government; it everywhere appears in the midst of free institutions. In one sense, Chatham was a boss, and Gladstone and Thomas Jefferson and Andrew Jackson and Abraham Lincoln; that is, these were all men who towered above their fellows, had very positive views as

to a political policy, and laid down principles which other men accepted under their guidance. They were also men who accepted the highest political responsibilities, who wrote or spoke in defence of their principles, who led men, not because they could combine votes, but because they had high aims.

The "boss," in the common acceptation of the term, is a man who concerns himself little with policies, and much with the bringing together of a majority which will enable him to keep his friends in office. The boss is sometimes a high officer in the government, either state or national; quite as often he is a private individual who makes but does not take political office. Some bosses have been religious men, some have been unconvicted murderers; that makes little difference to their success, because the boss is powerful, not through his private character, but through his masterly capacity of keeping up that combination of private interests which constitutes the machine. Bosses increase, simply because experience shows that one leader acting through a strong organization is more likely to win elections than a conclave or oligarchy of similar leaders.

The boss is usually a man who has a vast number of friends, some of them won by admiration of his qualities, some of them attracted by all sorts of advantages thrown in their way through the great man's influence: a struggling young lawyer gets a case from an intimate friend of the boss and the promise of more business; the enterprising young business man finds that the boss will endorse for him at the bank; the promising young editor gets public printing. These are not all acts of bribery; they may be simply methods by which the political leader marshals his followers. If the boss had an immense fortune which he was expending in these benevolent ways, he would not be so much criticised: the wrong is that so far as his acts cost money, they eventually come out of the public treasury, directly or indirectly. Some bosses are perfectly content to make no financial profit out of their enterprise; others accumulate fortunes: in either case, the harm done to

the public is the same; for the corrupt boss enjoys the sense of power, not that he may increase the happiness and welfare of his countrymen, but that he and his friends may retain the power of spending public money in part for private ends. The most successful bosses raise the necessary funds for their operations by assessments upon large corporations; but in the end these corporations recoup themselves by withholding service to which the public is entitled, or by securing privileges which otherwise they could not have. The great objection to the boss is that he makes out of politics, which is a means of serving public interest, a private and almost a commercial enterprise; and that thereby he is demoralizing the public service. Well-to-do people can always protect themselves from any serious harm arising from boss government. It is the poor people, the friendless people, who lose most and suffer most from his sordid rule.

Where there is a boss, the feudal system in politics is complete: he stands as sovereign; the district leaders, the heelers, and the voters all in succession owe him allegiance; he makes his power effective by his almost absolute control over the candidates to be nominated by his party. Hence the ablest and most respectable men frequently make terms of some kind with the boss. In the worst instances, they buy their nominations by large contributions to the "campaign fund"; in other cases, they accept nomination with the tacit understanding that if elected they will deal paternally with the supporters of the boss. Through his control of nominations to the state legislature, the boss in many ways dictates legislation: if his party has the majority, a measure that he endorses is perforce accepted by his men in the legislature; a measure that he opposes is remorselessly cut out. This leads, in the blackest cases, to an habitual dicker between the boss and corporations which desire legislation: he agrees that in consideration of money duly paid to him, or for advantages to his friends through the corporation, he will deliver the legislation desired by such corporations. When public franchises valued at many millions

are given away by legislatures or city councils, they are given for some kind of consideration, either political support or actual money.

This is the lowest type of so-called "popular government": a legislature in which the majority of members owe their nomination to an organization in which one man rules; a governor often springing from the same source; other officers owing their appointment to the same influence. When such a situation prevails, it constitutes nothing in the world but a tyranny under the forms of free government. Such tyrannies would inevitably lead to political revolution and civil war in the United States, as they have in all other countries and in all ages of the world, but for two reasons. First, the boss must after all satisfy his followers that he can win, and in order to keep them in line he must nominate some candidates that he does not like and accept some unpalatable policies; like the czar of Russia, the boss of an American city has to take some account of public sentiment. In the second place, sooner or later American freemen get tired of personal government, and get up some sort of combination of the better elements in all parties to deprive the boss of his majority; whereupon he becomes helpless. In this last condition, the boss usually fights by falsifying election returns; and the only remedy in such a case is for respectable members of the boss's party *en masse* to desert him and vote for any promising candidate who can be elected against him.

In this sketch no reflection upon the ordinary American voter or the ordinary American public man is intended. American popular government is in principle a government of the majority for the benefit of the public. When hundreds of thousands of voters obey without demur a single will, it results in the establishment of a camorra, — a political state within a state, a part of the citizens organized for the purpose of securing privileges from the government from which their fellow-citizens are excluded; and in many cases it is simply the rule of an organized, determined, and unscrupulous minority over a stupid majority.

49. Influencing Voters.

In most elections, from year to year, the majority of the men who go to the polls will vote the "straight ticket" of their regular party; the number of voters who can in any way be brought to change their habitual vote is rarely more than one fifth of the whole. In the election in New York City in 1901, if one voter in thirty-six had voted the other way, there would not have been a change in administration.

(1) The most ordinary influence on voters is simple persuasion. In some parts of the country, especially in the South, there is joint discussion of public issues, listened to by both sides. In the Northern states, political meetings are usually attended only by members of the party that holds them, who have not come to have their opinions changed, but to have them confirmed.

(2) The newspaper is of course of great influence over voters. Newspapers frequently take new ground, and sometimes in a hot campaign change over from one side to the other; but, again, most Americans read only the newspapers of their own party, and hear very little of the argument of the other side. Hence the importance of special campaign literature; for instance, in 1896, the Republican National Committee deluged the state of Iowa with specially-prepared political tracts, mailed to individual voters whom they supposed to be making up their minds on the question of the gold standard.

(3) Another method of influencing voters is by intimidation, — sometimes nothing more than the disapproval of a man who votes unlike his neighbors, sometimes fierce and cruel personal abuse, sometimes threat of dismissal from employment. The Australian ballot has been favored by labor organizations because it enables the workman to escape from this form of oppression, since it is almost impossible to find out how a man has voted unless he himself discloses it.

(4) Farther down still is the brutal violence at the polls, of which there have been many examples in American history. The usual form is for friends of one party to drive away the

watchers of the other party, or to threaten voters when they offer their ballots. With the introduction of metropolitan police, since 1860, this violence has become less common in large cities; and the Australian ballot laws, which in many cases forbid the assemblage of persons about the polls, take away the pretext of violence. However, since the Civil War there have been some cases of voters driven *en masse* from the polls by bodies of armed men. Such practices are the destruction of free government; for if A and B stand together to drive from the polls their brethren C and D, who are equally legal voters, the time may come when the A's will unite to keep their brother B's from the suffrage. If policies cannot be changed by orderly votes, government ceases to be republican and becomes military; and military government tends to despotism.

(5) Another too frequent method is the corruption of voters. Bribery is as old as votes, — very frequent in the Greek and Roman republics; for half a century, from 1725 to 1775, the recognized method of getting a government majority in the House of Commons; frequently practised in the colonies; and to this day one of the most widespread and demoralizing influences. The most subtle form of bribery is to pay a man on election day for peddling tickets, for getting out the voters, or for reporting the vote. Another form is the purchase of "political movements": temporary third parties are set up for the express purpose of being bought off in a block. Another method is to hire men to stay away from the polls, one of the most dangerous of all forms of bribery because it cannot be detected by any ballot device.

(6) Perhaps the baldest form is to pay money outright for votes: candidates for offices are often assessed thousands of dollars for campaign funds; and cases have been known where they have gone from polling-place to polling-place, actually giving out rolls of bills to be distributed among the voters. The indiscreet written advice of a political leader in 1888, to secure the "floaters in blocks of five," was an unblushing ad-

mission of the worst form of bribery, — the gathering up of tramps and loose characters, corralled in warehouses like cattle, let out in gangs of five with a watcher to deposit their votes before their money is paid. This is a shameful spectacle; and although in most communities only a small proportion of the voters will sell their birthright, yet that small proportion may be just enough to turn the scale.

It is needless to say that the bribed voter is no voter, that he is simply a pawn in the hands of a man or the organization that pays him. In most states there are strict laws against either giving or receiving bribes; but bribery is an offence extremely difficult to prove, because neither party desires that the transaction be made public. There have been cases in which, on the day of an election, the party heelers on both sides have agreed to divide their campaign funds, and let the floaters cast their ballots uninfluenced. Such conduct is of course held dishonorable by those sensitive people who furnished the money.

50. Relations of National and Local Politics.

One of the reasons for the extraordinary hold of the machine and the boss is the close relation between national and state politics. National issues are large, and attract the attention of the whole country: the tariff, currency, foreign relations, the army, the navy, interstate commerce, — these are subjects in which most intelligent persons are interested; and the play of parties in Washington is on a grand scale. Although during the years from 1876 to 1896 the two great parties had no strongly contrasted policies, there was always a sharp division on minor questions. Party organs throughout the country naturally dwell upon these differences. Most men attach themselves to a party, and are interested in seeing it succeed, because such success means the advancement of a preferred policy, or at any rate the success of friends.

In the states, however, the questions are local: whether there shall or shall not be heavy taxes on personal property,

whether railroads shall or shall not be allowed to consolidate, whether prisons and asylums shall or shall not be placed under the control of a single executive board, — these are plainly questions not in any way dependent upon national policy; and hence upon the face of it there is no reason why there should not be in every state two or more parties dividing on strictly state issues. Such parties existed in the colonies and in the early states. State questions arise and have to be settled; there must be a division of opinion, but in practice, in every state in the Union, the parties correspond to the national parties; and in elections people are concerned, not in choosing railroadites or anti-railroadites, not in choosing men who will vote for or against the sale of liquor on Sunday, but in choosing members of the Republican or Democratic or Prohibition party.

The reason for this habit is plain: in order to carry national elections, the voters must be known, recorded by party managers, organized, and kept informed. Parties work in season and out to keep the voters from scattering and subdividing on state issues. Furthermore, those who are most successful in state politics pass into the arena of national politics: for instance, the governor aspires to become a senator of the United States, and must prove his claims by service, not only to the public, but to the party whose suffrages he desires.

The same principle gets into city politics, where the relation with national affairs is even more remote. In cities the main issues are those of public works of various kinds, — streets, public libraries, gas works, bridges, wharves, schools; and there can be no Republican pavements, or Democratic bridges, or Prohibition schools. Yet in almost all cities the permanent political combinations are based on the national political organizations: a man who wants to be mayor seldom is elected because he favors the things that the people want, but because he is accepted by the Republican or the Democratic organization as a good man; and in local elections effort is made to choose, not so much men who will vote in accordance with

public good, but men who will act together for the ultimate good of their national party; and it is in the cities that the machine and the boss have their largest work, precisely because the number of voters can be handled within very narrow territorial limits. The cities have also large numbers of public servants whose patronage is one of the most effective supports of the boss. It is quite conceivable that a boss might arise in a city on local issues, if they could be kept going long enough for him to perfect his organization; but every powerful boss aspires to control his state as well as his city, and for both he uses a perfected party organization.

The evils of this connection have perhaps been exaggerated; as a matter of fact, on a very large number of the measures brought before state legislatures, the members either exercise their discretion or vote as they are directed by their backers, without reference to parties. The harm is not that the states and cities try to conform their policy to that of the nation, but that the members of the state and local governments are nearly all nominated by party agencies; and wherever the power of nomination has fallen into the hands of combinations and bosses, officials are not selected for their likelihood of public service, and hence do not command public confidence. In most cases, the voter must accept one or other of the candidates placed before him by the organizations.

To meet this difficulty, various forms of non-partisan or citizens' movements have been devised. None of them have ever made much headway in state governments: the main check on excess of party spirit is that people who are sufficiently discontented with the conditions of the government unite with the opposition party in good common nominations. This is a process which the boss is always afraid of, and which he will often prevent by making concessions. In some cities for many years together there have been citizens' or people's tickets irrespective of parties, and usually successful. A notable example is the city of Cambridge, Massachusetts, in which for twenty-five years, from 1876 to 1900, no man was

elected mayor on a party ticket. The more common method is a form of citizens' temporary ticket, combining the dissatisfied elements in all parties for an exigency; such a combination carried the city of New York in 1901.

51. Reform of Party Methods.

So far in our history, there has never been a political evil for which alleviation and relief could not be found. The remedy for the party which has lost its conscience and continues without any purpose is to found a party upon vital issues. Thus the Whig party disappeared from 1852 to 1860, and the Republican party took its place. The remedy for the conditions of the nomination system is not so easily brought about. The statutes so far passed for regulation of primaries by law have always proved inadequate, partly because of the ingenuity of politicians to find legal ways to get round the intent of the laws; and, further, because in such a system some state authority in the last resort must decide which party or which caucus is regular and therefore legal, and thus the state assumes the final decision in the internal affairs of a political organization.

A remedy for over-organization is the so-called "Crawford County," or direct nomination, plan. Some weeks before election day, polls are open for the members of each party, and they express their preference for candidates of their own party. This system has been adopted in Minnesota; attempts have been made to introduce it into Wisconsin; and as an optional measure, or one applied to special localities, it is in use in Pennsylvania, Ohio, Mississippi, Oregon, and other states. Of course it requires careful legislation to prevent the voters of the other party from coming in and directing the nominations of their opponents; the advantage is that it takes nominations out of the hands of "the organization."

In this system of popular nomination the real difficulty is, however, only shoved back; because in the end that man is

most likely to get a majority on a nominating ballot, who is known to have a great many friends; or, what comes to the same thing, has the support of men who control large numbers of votes. It is doubtful, therefore, whether the result will not simply be the pre-designation of men as the favorites of the organization. Still, the system does put an immediate and wholesome check upon the designation of obviously unfit or unpopular men; and if a man is really popular in his party, but has not the favor of the magnates, he may still secure a nominating majority.

This method is intended to supplement not only the caucus but the convention, especially the cut-and-dried convention; but in making up a convention ticket an effort is always made to secure representatives from various wings and geographical sections of the party, and from various elements of society; therefore it is doubtful whether a ticket indicated by the nominating-election system would poll as many votes in a state as one selected in the usual way; and in close states voters will always be dissatisfied if they steadily lose elections. Nor is this method of much avail for independent or third-party candidates, since only regular adherents to a party can be permitted to take part in the preliminary election of their party. In city politics, the most effective elective reform is brought about by citizens' organizations. Societies are often effective in following up and exposing neglect or corruption among public officials; such are the Watch and Ward Societies, the various civic leagues and municipal leagues, most of which take no direct part in nominating candidates.

Citizens' organizations for making nominations are effective just so far as they imitate other political parties by themselves forming permanent organizations. In the city of Cambridge, for instance, there has been for thirteen years an association called Library Hall, which elects its own members. Its function has been to consider the nominations by other people, and to select out of all the names thus brought before it the candi-

dates it thinks most worthy of public support. The association thus avoids the charge commonly made against such organizations, that it simply wants to substitute its own men for somebody else's men. Library Hall also publishes a useful account of the attention to public business by the members of the city legislature, such as the number of meetings attended, and votes upon interesting public questions; that is, it attempts to place at the service of the voter a careful brief account of each candidate, of his qualifications for the work, and of his public service if he has previously been in office.

Another method of reform is by taking advantage of public dissatisfaction on local issues, to work out an organization which may compete in making up a ticket. Such a movement must have a committee and campaign fund; it must employ men to canvass the voters and to keep watch upon them at the polls; it must provide speakers and places for them to speak. In the local campaigns in New York in 1897 and 1901 such an organization initiated the method of speaking from wagons, which can be drawn from place to place, requiring no expense for halls, and bringing political discussion home to the voter.

There is, however, but one ultimate relief from extreme party organization, and that is for a sufficient number of party voters to rebel when they think their organization is going against the public interest. This involves frequently a great sacrifice; for a man having a genuine and rightful ambition to serve his fellows in public life knows that, if he breaks with "the organization," he is likely to be marked for life. Yet there is nothing so much admired by the American people as political courage; if the old organization is destroyed, this power to boycott a man disappears, and there have been plenty of cases where by sheer force of character, by personal popularity, by representing a great principle, men have compelled unwilling organizations to accept them as candidates, and to throw influence in favor of their election. In all cases a good

citizen may recall the organization to its purpose by voting for the opposition candidate in whom he has more confidence; or, if he cannot make up his mind to forsake his lifelong party, by simply staying at home in sufficient numbers, he may administer such a rebuke as will never be forgotten.

Part III.

State Governments in Action.

CHAPTER VI.

THE STATES AND THE UNION.

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53. Variety and Unity of State Organization.

Historically and practically the states are the foundation of government within the United States. President Lincoln truly said in 1861: "The states have their status in the Union, and they have no other legal status," yet state organization preceded national organization, and to this day underlies it. If all the states of the Union should cease to work, the national government would not, under the constitution, control a sufficient part of the domain of government to maintain itself.

The cardinal principle of the present Union is that, except in matters distinctly regulated by the federal constitution, each state is free to govern itself. Hence great variety in the form and the functions of the state governments: for instance, the Massachusetts legislature sits nearly six months out of every year, and every one of the fifteen hundred bills introduced receives some kind of consideration; the California legislature loses its salary if it sits more than sixty days; while the Alabama legislature meets only once in four years; judges in Montana are elected for terms of six years; judges in New Hampshire are appointed for life; by the laws of New Jersey a money-lender cannot collect more than 6 per cent interest; the laws of Idaho allow 12 per cent.

Such differences are not all accidental; some of them go back for centuries: of the present forty-five states eighteen formed parts of English colonies before the Revolution, and show distinct traces of colonial tradition in their governments; another group of states, from Louisiana to California, bears the impress of former Spanish and French law. Other communities, such as Arkansas and Michigan, have been founded by those settlers who first came in and brought with them familiar law from the old states.

Local conditions also account for and require a great variety of legislation: lumber states, like Maine or Wisconsin or Washington, have special laws governing forests; stock-raising states, like Colorado and Texas, legislate on wire fences and branding cattle; states with large areas of waterless lands, like Nebraska and Utah, provide for irrigation; communities like New Jersey, with hundreds of thousands of foreign immigrants engaged in manufactures, need different legislation from a community like Vermont, with a rural American population.

On the other hand, throughout the Union the state governments are very much alike, and legislation rests more on a common basis than appears on the surface. All the governments have three departments, each intended to act independently of the other two. In all, the legislature, of two houses, is the repository of governing power not otherwise granted or expressly withheld; its legislative work is supplemented by the traditions of English common law. Most of the states elect the chief financial and other administrative and executive officers. All have a series of courts, culminating in a single supreme court. In every state large areas of public power are transferred by the legislatures to cities and localities.

The legislation of the states is freely borrowed one from another; and the courts quote and follow decisions of their neighbors. Nevertheless, great confusion comes from the variety of criminal and civil legislation: for instance, marriage and divorce laws are such that a man may have two legal wives,

each entitled at his death to his property in the state in which she lives; the descent of property is also different. The advantage of the variety of state legislation is that the people of each state establish the system and make the laws which they think best adapted for themselves, and therefore the easiest to execute.

In size and importance the states differ widely: the largest, Texas, has an area of 265,780 square miles; the smallest, Rhode Island, only 1,250 square miles; the most populous state, New York, has 7,300,000 people; the least populous, Nevada, has 42,000 inhabitants; the Massachusetts population is 350 to a square mile; in Wyoming it is 1 to a square mile. Texas is larger than European France; New York has more people than Belgium and Holland together; and several other states are large and populous enough to be a great country in themselves. Many of the states of the Union are made up of different and sometimes hostile sections: Illinois is divided into a wheat belt, a corn belt, and the city of Chicago. In such states few people are widely known throughout the state, and it is therefore difficult for voters to judge of the quality of candidates.

54. Admission into the Union.

The forty-six states have formed their relation with the Union by five methods: —

(1) The thirteen original states joined in the Revolutionary War and the Declaration of Independence, and ratified the Articles of Confederation and the Federal Constitution.

(2) Out of those thirteen states, five others have been formed by separation: Vermont out of New York in 1791; Kentucky out of Virginia in 1792; Tennessee out of North Carolina in 1796; Maine out of Massachusetts in 1820; West Virginia out of Virginia in 1862. It was expressly provided in 1845 that Texas might be cut up into not more than five states; but that commonwealth has never shown any desire to break itself up. The only probable separation in future is that of the two peninsulas of Michigan.

(3) The only case of incorporation of an independent nation as a state is the admission of the independent republic of Texas, in December, 1845.

(4) Another abnormal method was the creation of the state of California out of a region incorporated by treaty in 1848, which had never gone through the territorial status: the people were determined to have a state government, and Congress was obliged to acquiesce.

(5) Twenty-six states in the Union have been formed out of pre-existing organized territories by act of Congress, under the clause of the constitution: "New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress."

In addition, eleven states which, from 1861 to 1865, withdrew from participation in the federal government, were conquered and practically treated as disorganized territories; eventually, they all accepted the terms proposed by Congress, and in 1870 the last of them was again recognized as a full and equal member of the Union.

The usual method of admitting a territory is first to pass an enabling act, authorizing the people to form a constitution, to submit it to the voters of the territory for their approval, and then to submit it to Congress. Congress has several times delayed the admission of a state because it disliked the proposed constitution, particularly in the case of Missouri in 1820–21, of Kansas in 1856–58, and of Utah in 1890–95.

The Ordinances of 1784 and 1787 both promised that Western states should be admitted "on an equal footing with the original states"; and the same principle of equality has held for later annexations: each state has the same number of senators, the same constitutional privileges, and the same federal obligations. Nevertheless, about twenty-five states since

1802 have entered the Union under specific conditions: in 1802 Ohio had to make an ordinance, irrepealable without the consent of the United States, by which the new state was not to tax lands sold by Congress during five years after sale; in 1812 the Louisiana Act laid down the condition that the Mississippi River was always to be free of toll; in 1820 the House of Representatives proposed to prohibit slavery in the future state of Missouri, and although this clause was finally left out, a clause was inserted to the effect that the state should not interfere with the rights of citizens of other states who might come into Missouri; in 1864 Nevada was required to agree that slavery should never exist in the new state. The reconstructed states all accepted conditions with regard to negro suffrage and public debt. Plainly, the states are not equal, even though most of these conditions have been unimportant, like those as to the sale of public lands; or temporary, like the provisions as to negro suffrage.

When a territory is admitted as a state, all its pre-existing laws, unless inapplicable or contrary to the federal constitution, remain in force until altered by the new state. Hence in Louisiana the old French civil law has remained in effect even after statehood; and in California and Utah there is still a body of Spanish law.

55. Privileges in the Union.

States as members of the federal Union have large privileges, the first of which is representation in the Senate and the House; and they all participate in the election of president. The constitution of the United States especially guarantees to each of the states a republican form of government. This clause was inserted partly in consequence of the Shays Rebellion in 1787, and was intended to authorize the federal government to aid and support a state government if attacked by insurgents. What does "republican government" mean? That no state may have a formal oligarchic or monarchic system. But this

clause does not apply to bosses who get actual control of a state government, since their rule is not hereditary, and since they keep up the forms of election. At least fifteen times rival state governments have been set up in the same state; in such cases some department of the federal government, usually the president, must decide which is the legal body and therefore entitled to the guaranty. Repeatedly during the Reconstruction period, federal troops were called out to protect or disperse one of these rival governments. Another clause in the constitution authorizes the president to send militia or federal troops at the call of a state government which is in distress; and such calls have repeatedly been made.

The next right of a state is territorial integrity: it cannot be divided without its own consent. It is also to be protected from invasion by a foreign enemy; hence it is the duty of the United States to represent the states in boundary controversies: thus Maine, from 1820 to 1842, insisted that the United States should make no compromise of territory disputed with Great Britain on its northern boundary.

The states have also some important financial privileges. The United States has twice distributed considerable sums of money among them: in 1837 about $27,000,000; in 1891 about $20,000,000; and in 1790 it assumed about $18,000,000 of state indebtedness. These are small sums in comparison with the amounts given by the United States through the public lands: from first to last the United States has transferred to the states about 162,000,000 acres of public land for various purposes, land which, if carefully nourished and sold at its market value, would probably have produced $1,000,000,000. Since 1887 the United States has also made annual appropriations for the support of state experiment stations, and since 1890 for that of agricultural colleges, the whole amounting to about $2,000,000 a year.

56. Interstate Obligations.

The first group of state duties are those which they owe to one another as sisters and equals. The constitution specifies that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." This means, not that state authorities are bound to accept the acts of a neighbor as binding across the border, but simply that, if a decision has been made in Indiana, the courts of Illinois are bound to accept the fact of the decision from an authenticated copy of the record; but the jurisdiction of the Indiana court may still be questioned. The purpose is that, when a matter has been examined and the facts decided by a competent tribunal, it shall not be necessary to retry it in every other state.

Nevertheless, two practical difficulties constantly arise: in the first place, the same man or estate or corporation may have property in several states, in each of which separate suits must be brought, perhaps on different grounds, in order to establish the title; in the second place, no court is bound to execute the law of another state in the Union. The United States courts often have jurisdiction in cases of complicated property, especially those involving railroad and other corporations doing business in several states.

Another obligation is the return of fugitives. While slavery lasted, the principle included fugitive slaves; and by two successive acts, of 1793 and 1850, the United States government prescribed a method of capture independent of the state governments. The captures were unpopular in many Northern states, and led to forcible resistance to the authority of the United States government, and to the so-called "Personal Liberty Bills" (1840–1861), which impeded the operation of the national statute. On adoption of the Thirteenth Amendment, the fugitive-slave clause of the constitution became obsolete.

Another obligation is the extradition of fugitive criminals;

but here the states must act. The usual method, in case a criminal takes refuge in another state, is to have him arrested and held for a few days, until the governor of the state from which he came may send a direct "requisition" to the governor of the state in which he is found, to authorize his return; when such a document is granted, the police authorities allow the man to be carried beyond the state boundary. Requisitions are often refused, on the ground that the crime charged is unknown to the statutes of the refuge state, and sometimes because of personal hostility between governors. The system is one necessary for the protection of the community; but the Supreme Court has decided that there is no way to compel a governor to do his duty, if he is indisposed.

Another clause of the constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The purpose is to prevent states from interfering with citizens of other states who want to move about or to settle within their limits, whether by laying special taxes on them, or by excluding them from carrying on a lawful calling, or by withdrawing the right to use the courts of the state. Any citizen of the United States has this right to move about the whole Union, and to dwell in every state on the same terms as its own citizens.

Another obligation (not expressed in the constitution) is comity, — that is, the duty of the states to act toward their sister states with courtesy, consideration, and good humor. For instance, inveigling a person charged with crime over the border of a state and then arresting him, is not exactly a crime, but it is contrary to pleasant relations between neighbors.

How far is one state obliged to take notice of the laws of another state? This is a branch of jurisprudence known in legal literature as "conflict of laws," or as "private international law." Our courts often take note of laws or decisions in other states or in foreign countries. For instance, suppose a Frenchman dies in New York leaving Parisian real estate to his

son in Georgia; the Georgia courts cannot avoid taking note of the French laws of descent, and may also apply the New York law.

57. Duties in the Union, and State Sovereignty.

For the prosperity of the Union, the states must carefully observe their obligations to the Union. First of all, they are bound to keep up the forms of the United States government, — to carry out the federal laws by erecting districts for members of Congress and by electing senators; and all state officers, executive, judicial, and members of state legislatures, are constitutionally bound to take oath to support the constitution of the United States and to maintain a republican government.

The states are under obligation not to contravene the federal constitution by clauses in their state constitutions; yet from 1865, when the federal constitution first prohibited slavery, till the constitutional revision of 1890, the Kentucky constitution retained a clause to the effect that "the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever"; but it was simply a dead letter. The states are also bound not to pass laws which in any way interfere with the prerogatives of the federal government: they must not tax federal property, directly or indirectly; they may not even directly tax federal banks or the incomes of federal officials. When this principle is disregarded, it often leads to conflicts of authority between state and federal officers, and even between state and federal courts, as in Ohio in 1824. Usually a legal line between the two sets of authorities is drawn by a test case decided by the federal Supreme Court.

The states are formally bound not to enter into compacts with one another, or with a foreign power, without the consent of Congress, or into any treaty, alliance, or confederation. This article is intended to prevent the formation of separate internal leagues and agreements, and applies to such organizations as the Confederate States of America, formed in 1861.

The most important duty of the state is to remain in the Union. Long before the Civil War, the so-called "doctrine of state rights" was worked out to its logical consequence, — that the sovereign rights of the state have never been surrendered, and may legally be protected by forcible withdrawal from the Union. The basis of state rights and secession is the same, — namely, the assumption that the states are and always have been sovereign, independent, and free to dissolve a voluntary union.

To settle a question of that nature on theoretical ground is difficult; but in practice no state in the Union has ever been sovereign, except Texas. No one of the thirteen original states ever made a treaty for itself, or a foreign war on its own account; throughout the Revolution all the states acknowledged a responsibility for the common national funded debt and paper money; they all united in making a national army and navy, and in appointing national officers to command; during the weak Confederation the states admitted the sole authority of Congress to negotiate treaties, to coin money, and to do many other important acts. Even during the secession era of 1861–1865, no one of the seceding states ever really acted independently: at the earliest moment they went into a confederation, which directed their joint affairs during the war. In the opinion of the Supreme Court of the United States in passing on the Reconstruction acts, no one of the states was ever outside the territory or jurisdiction of the federal government after admission within the Union. Chief Justice Chase called it "an indestructible union, composed of indestructible states."

Practically, the result of the Civil War was to make it plain that a large proportion of the American people disbelieved the doctrine of state sovereignty, and that any body of states which in the future may attempt to assert that doctrine by actual secession will have to fight the rest of the states. Henceforth nobody can for a moment suppose that there can be such a thing as peaceful secession. Yet the states do retain a large

number of absolute and undoubted rights. Consolidation of the Union would be almost as great a misfortune as disunion.

58. Functions of State Government.

Although by tradition and by the Tenth Amendment to the constitution the states possess the powers not delegated to the federal government, the total body of such powers is in action much restricted. The states are by the federal constitution directly prohibited from the exercise of some specified powers: thus no state can coin money, or grant titles of nobility; no state can establish slavery, or deprive a citizen of the United States of citizenship, or deny the suffrage to citizens of the United States on account of race, color, or previous condition of servitude.

Other powers are indirectly prohibited: for instance, no state can exercise jurisdiction over the District of Columbia, because the United States has exclusive jurisdiction there.

There is a small field in which neither the nation nor the state can legislate: neither power may give preference to the ports of one state over another, or pass a bill of attainder or an ex post facto law, or deprive a person of life, liberty, or property without due process of law, or abridge the constitutionally-protected privileges or immunities of citizens.

The area of excluded powers is very much enlarged by the particular provisions of state constitutions, especially by the bills of rights and the restrictions on legislation; for example, many constitutions withhold the right to grant special charters to corporations, or to give public aid to railroads. The local governments are still more tied up by withdrawals of powers nominally within their field. The result is that in America the possible functions of government are smaller than those exercisable by European nations, and smaller than they were a century ago. Nevertheless, there is still an immense field for legislation: thousands of new statutes are adopted every year, and thou-

sands of court decisions expound constitutions, statutes, and principles of government.

The first group of fundamental state powers is concerned with individual rights: the states may confer privileges on citizens and aliens, including the suffrage; and they continually regulate the ordinary relations of man with man, and of property (such as the right to acquire, to sell, to transmit by gift or will or by inheritance), as well as the relations of officials with private individuals. Included in this power is the enormously important right to create corporations, which have many of the privileges of individuals, such as the right to hold property, to sue, and to be sued.

The next group of powers is territorial: almost the whole domain of private landholding and transfer comes under the state governments; the state owns public streets and roads, parks, and public buildings; the state also enjoys and may delegate the great right of eminent domain, — the appropriation of private real estate for public purposes on payment of a reasonable compensation. The state makes and alters the network of territorial subdivisions, — counties, townships, school districts, towns, cities, boroughs, wards, voting precincts, judicial districts, and all the rest.

The financial powers of the state are large. The commonwealths and their creatures, the local governments, raise in taxes about one and one half times as much per capita as is raised by the federal government; and they expend all this and more, for they are constantly incurring debt.

The commercial powers of the states are many fold greater than those of the nation, because they control almost all private business not interstate, — manufactures and industries of every kind, and transportation within the state. Since the volume of business which begins and ends within a state is very much greater than that which crosses even one state boundary, the larger part of American commerce is directly subject only to state law.

The states have the important military right to employ organized force to keep order, if necessary. The police of the cities are really state officers; the militia called out to execute the laws are under state command. Public health and morals are largely controlled by the states: epidemic diseases, dangerous pursuits, the question of the sale of intoxicating liquors, these are all practically out of the federal realm. Finally, to the state falls also almost entire control over the two great agencies of civilization, religion and education.

CHAPTER VII.

STATE LEGISLATURES.

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60. Members of the Legislature.

Since under the theory of American government the states retain all the powers not granted to the federal government, and since at the beginning the state legislature was the chief power in the state, it is a recognized principle that the legisla-

ture may perform any act incident to government which is not by the federal or state constitution withheld or otherwise assigned. Hence it is the most powerful part of every state government.

In every state the members of the legislature are chosen by popular suffrage. During colonial times and for many years later, many states had special qualifications for legislators: in two states, Maryland and Tennessee, no minister might be a member. In most states now, no holder of an executive office, state or national, may sit in the legislature; in Indiana, even a bank officer is excluded from it. Property qualifications for office have now almost entirely disappeared; and it is a rule showing very few exceptions that a person eligible to vote is also eligible to hold office.

Everywhere throughout the United States it is either a written or an unwritten law that a member of the legislature must live in the district from which he is elected; and the rule is practically self-operating, for it is next to impossible to elect a man who is not a resident among the voters who choose him. With three exceptions, legislators are elected from districts intended to be about equal in population: in Connecticut, each town or city has one or two members of the lower house; in Rhode Island each town or city has one senator; in New Hampshire, every town of 600 inhabitants has a representative, and an additional one for each increase of 1,200 inhabitants, but towns of smaller population have representation a proportionate part of the time. In many states, the counties are the unit for districting for members of the legislature. The colonial idea of representation by communities has almost disappeared; for to a modern mind it seems inequitable that a village of 75 voters in Connecticut should have half as much influence in the legislature as a city of 15,000 voters.

The term of legislators varies from one to four years, the usual term being two years; but the continuance is very short, especially in the lower house: people do not recognize the

advantage to a district of being represented by a man who has had long experience. In a recent New England legislature of 106, 100 had not sat in the previous legislature. The chance is about even that a member, no matter how serviceable, will not get a second term; it is thought wonderful in Massachusetts that a particular member should have been eight years elected to the lower house. There is of course some advantage to the community in a large number of ex-members of the legislature, acquainted with the methods of public business; and the legislatures are a kind of school for ambitious men, who hope to pass from the lower to the upper house, and thence if possible to other state offices or to Congress.

In quality, the state legislatures fairly reflect the average man in the community, except that the inexperience of new members makes it easier for party leaders to manipulate their votes. As the work of the legislatures is tedious and often long, and the pay small, it is difficult to attract professional men who have large incomes. Wherever there is a highly-organized boss system, some members of the legislature come in really as representatives of particular politicians or of business men not known in politics: Theodore Roosevelt found in the New York legislature in 1883 one man whose vote was controlled by a criminal. The difficulty with legislators who are under obligations to party chieftains is that they must follow the will of their leaders rather than the will of their own constituents. Nevertheless, members of legislatures are in general very sensitive to public opinion, and most of them represent and express the wishes of the people who send them.

61. Organization of the Legislature.

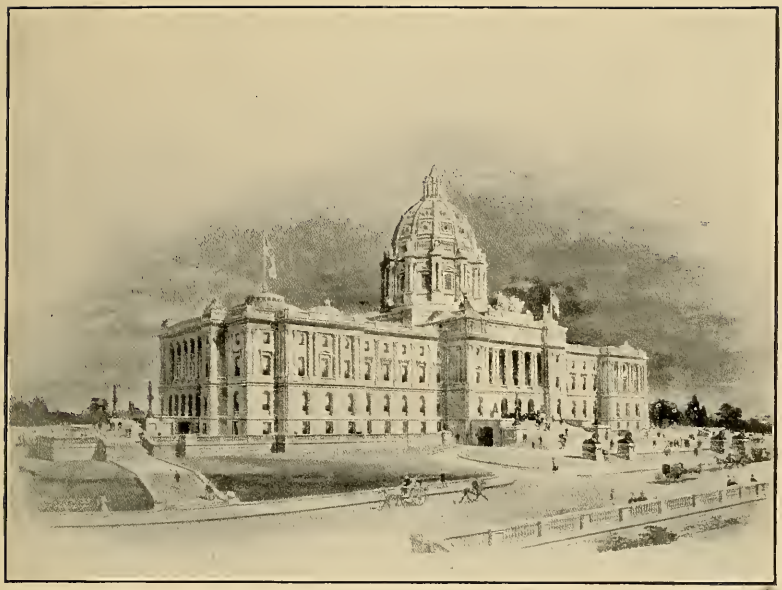
The state legislatures differ in numbers: Delaware has 17 senators; Indiana has 50; the Delaware House has but 34 members; the New Hampshire House has 397. The average legislature, taking both houses together, has about 100 to 150 members. In all the states and territories, legislators are paid,

the largest annual amount being $1,500 in New York, the smallest annual salary $150 in Maine. Many states prefer the per diem system, ranging from eight dollars a day in California to three dollars a day in several states; in addition it is common to allow mileage, commonly at a rate much larger than actual expenses. In almost all cases, however, the salary and fees are too small to be an object in themselves: most aspirants for the legislature seek it for reputation or power or opportunity.

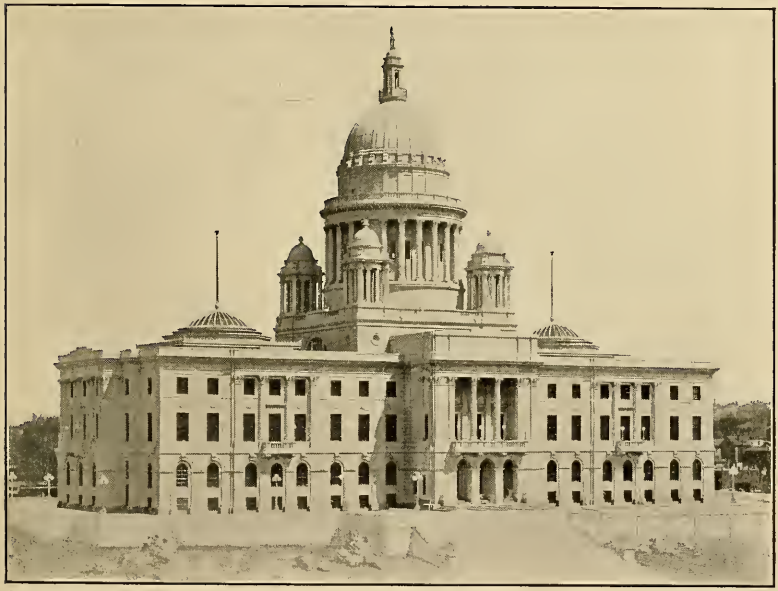
The official title of the legislative branch is commonly "legislature" or "general assembly"; in Massachusetts and New Hampshire it is the colonial title "general court." The upper of the two bodies is invariably called the Senate; the lower house, sometimes the House of Delegates, more often the House of Representatives. Although three of the states of the Union — Pennsylvania, Georgia, and Vermont — at one time had legislatures of a single house, there are now two houses in every state. The two bodies represent different gatherings of constituents, and often exhibit permanent differences of temperament; and the bicameral system gives time for a thorough discussion of measures. Although the upper house in many foreign countries, as in England, France, and Canada, has become weaker than the lower, in the state legislatures the two houses have about equal power, though the Senate, as the smaller, is more likely to do effective work. It frequently also has special functions, such as passing on appointments and sitting on impeachments.

The legislature habitually sits at the state capitol, or state house, in which is also the governor's office, and frequently a chamber for the state Supreme Court. Each house always has its separate chamber for meeting; and usually a flag appears over each wing of the building when the legislature is in session.

The internal organization of the houses is determined by the state constitution. The Senate has in some cases an elective



ST. PAUL MINNESOTA



PROVIDENCE RHODE ISLAND

STATE CAPITOLS

president, but more often the lieutenant-governor of the state sits, like the vice-president of the United States, as presiding officer; every lower house has its elective speaker. The habits of Congress have so far reacted on the state legislatures as to bring about almost the same system of internal organization, — a speaker, a body of standing committees, and a conclave of party leaders, acting as a steering committee. The speaker directs who may or may not have the opportunity of addressing the House, decides on points of order, and is a party leader, brought into consultation on any question as to the attitude of his party on pending measures.

Many cases of conflicting houses, or even of legislatures, have occurred. In 1849 two so-called "houses" were organized at the same time in the same room in Ohio, and continued their double sessions for several weeks. In 1873 the Kellogg and McEnery legislatures sat in two halls in New Orleans till the latter body was broken up by United States troops.

62. Process of State Legislation.

In two states that have annual elections, — Massachusetts and Rhode Island, — and in four others, — New Jersey, Georgia, New York, and South Carolina, — the legislature meets every year; in the other states, only once in two years; in Alabama, only once in four years. The governor may summon a special session if the business is not completed, or if new business arises. Many of the constitutions limit the length of session to forty or sixty days; and it is very common to cut off the per diem at the expiration of the specified time. The truth is that in many states people feel uneasy while the legislature is in session.

During the session, the legislature commonly meets every week day, though in small states it is very common to adjourn over Saturday so that members may have two days at home; and very often all the members have railroad passes, so that it is easy to come and go. As in Congress, each house has an elaborate system of rules, commonly reënacted from session

to session with amendments, the prime object being to enable the presiding officer to bring questions down to definite issues, and to enable the majority party to select the measures upon which it wishes to allow a vote.

The rules are further intended to prevent surprise, and commonly include provisions that bills must be submitted in writing, must be read and passed upon not less than three times, must not go through those three stages without the intervention of a day, must be reported on by an appropriate committee, and must be duly authenticated by the signature of the presiding officer of each house.

In most legislatures which are not absolutely under the thumb of a boss, there is plenty of genuine debate, more than in the national House of Representatives. Questions which personally interest members and affect their constituents are always coming up, and party lines are not drawn with any strictness on general non-political questions. All the state legislatures have the system of previous question, under which debate may be, and frequently is, remorselessly cut down; without some such arrangement, the houses would never be done with debating.

In every legislature, the rules of procedure are such that, if they are observed, it is next to impossible to slip a bill through without affording an opportunity of knowing its character and giving honest opponents an opportunity of debate; but the rules may be so manipulated as to prevent discussion. Deadlocks between the two houses of a state legislature are not uncommon, and sometimes last for several weeks. A frequent result of a deadlock over a bill is that it fails for lack of agreement; but a common way out is the appointment of a committee of conference from the two houses, which recommends some form of compromise.

63. Influences on State Legislation.

In the process of state legislation, the first question is that of initiative. While in some foreign countries bills must be introduced by the executive or by only one of the two houses, in the United States the initiative is not only in either house, but in any member of either house, and therefore in any constituent or body of constituents who can induce a member to submit a bill. In fact, bills are often drawn beforehand by people who desire legislation. The governor has everywhere the right to recommend legislation in his annual messages, and doubtless sometimes he or his friends actually draw up bills for consideration. In all the legislatures, the final form is given to measures by the committees.

The strongest influence, and the most effective in the long run, is public sentiment: if a question of taxation has been long discussed out of doors, the time comes when the legislature is forced to act upon it; a general railroad charter bill in which the whole community is interested will be pushed or held back, according as the public throughout the state is interested. The public press is one of the means of expressing this interest; another, and perhaps a more effective, way is through private letters and telegrams, of which hundreds sometimes pour in on a single member.

Bills of every kind run the gauntlet of the committees, and the greater part are remorselessly smothered in private conclaves. To be sure, committees frequently have public hearings, and in some states must hold them if desired; but their minds are made up in private session, and in almost every state, unless a committee will make an affirmative report, no vote can be reached. Hence a man interested in the passage of a measure goes to members of the committee which has it in charge. In some cases a delinquent committee can be awakened by a demonstration like that of the nine car-loads of people from Amsterdam Avenue, New York, who a few years

ago prevented the misuse of their street by going up to Albany to protest. In Massachusetts the committees are compelled to make a report either for or against a bill, and either house may, and frequently does, insert another measure for that proposed by the committee.

The members of committees are appointed by the speaker or the president of the Senate, who thereby has more power over the course of legislation than any one else. It is hardly to be presumed that committees made up by the speaker will report measures of which he disapproves; but, should they do so, the speaker will almost invariably interpret the rules of the House so as to prevent anything to which he is opposed from coming to a vote. This practice tends to legislative unity; for upon one man is thrown the responsibility both of initiating measures through the committees and of reviewing them thereafter. The speaker of the House of a legislature is therefore, like the prime minister of England, the centre of systematic legislation, working through and in harmony with the members of the majority; and he frequently allows measures to pass to which he is personally opposed.

In a few states there is behind the speaker the state boss, who controls the majority of each house, and hence the choice of the presiding officer. Sometimes the boss is governor; sometimes he acts in harmony with the governor; sometimes he acts against the governor: in any case, no legislation will go through which he opposes; and people who really desire to have a thing done, or to prevent it, are forced to appeal to him or to persons whom they suppose to have influence over him.

Mr. Roosevelt found in the New York legislature, when an innocent measure was proposed to which presumably no objection could be found, that certain members opposed it; he then set to work to find out who their influencers were, and found that one was the creature of a federal official of the opposite party, and another of a corporation manager. When influence

was brought to bear upon these owners, they gave explicit orders to support the bill, and their members instantly changed front. In most states and in most years, the greater number of members are free from such paralyzing influences; but there are cases in which the majority of the legislature are simply played as counters by hidden men of power.

How far the members of state legislatures are influenced by money is hard to know. One of the few advantages of the boss system is that it makes bribery of a member quite ineffectual, since he dare not under any circumstances vote otherwise than as the boss directs. Mr. Roosevelt thought that about one third of the members of the legislature when he knew it were open to some kind of money consideration; and there have been cases in other states where honest members have laid on the speaker's table great rolls of bills which had been offered them for their votes. Even when a member is open to corrupt influence, it is more likely to take the form, not of cash, but of a privilege, or of shares of stock, to be made more valuable by pending legislation. Hundreds of men pass through the legislature without meeting the slightest effort to influence their votes corruptly, because they are perfectly well known to be above any form of bribery.

One of the most frequent influences on legislation is the process called "log-rolling," by which various members agree that they will vote for the others' measure or part of a measure. For instance, if insane asylums are to be constructed, members of different counties will agree to vote for a bill to distribute the new buildings among their counties, and thus a majority for the whole bill can be obtained.

Another method of influencing legislation is to introduce so-called "strikes," — bills not intended to be passed, but to be bought or shaken off in some way: rich corporations are the unfailing objects of vexatious and unnecessary legislation, often carried along until some inducement is made to withdraw it. Where there is a legislative boss, he arranges those matters; and

frequently, for a fixed contribution to the campaign fund, agrees that the corporations shall not be further annoyed.

64. The Governor's Veto.

In forty-three of the forty-five states the two houses do not make up the whole of the legislative power, inasmuch as the governor has a qualified veto. The only remaining exceptions are Rhode Island and North Carolina. This veto power is practically found among the functions of the governors in all the thirteen colonies except two. The colonial veto, however, was absolute, whereas in all the states but one the veto may be and frequently is overridden by the later action of the two houses. In seven states a majority of all the elected members is required on such second vote; in two states, a three fifths majority, in all the other states, a larger majority, from two thirds up.

Nevertheless, in order to be effective the governor's veto must be definitely expressed: in all the states a bill becomes an act if it lies in the hands of the governor without examination for periods ranging from three to ten days. When the legislature adjourns before the expiration of this time, in eight states the governor has a period of from ten to thirty days to examine bills and decide whether he will veto or sign them. An interesting provision, which obtains in about twenty states, is that the governor may select items out of an appropriation bill for his veto, permitting the rest of the bill to go into effect.

The effect of the governor's power is not measured simply by the number of bills vetoed: the fact that the governor is opposed to a measure often causes it to be modified or withdrawn; or a conference is held with the governor by those interested in the bill, and modifications are made to meet the objections which he puts forward. Veto messages usually call public attention to a measure; and in many instances bills which have gone through by large majorities are made so unpopular that on a second vote they have not even a majority,

STATE OF WISCONSIN.

IN ASSEMBLY.

No. 98, A.

January 23, 1901.—Introduced by Mr. STEVENS. Read first and second times and referred to committee on Privileges and Elections.

A BILL

To abolish political caucauses and conventions and provide for political nominations by direct vote.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. All statutes pertaining to political caucuses and conventions for the nomination of all officers provided for in this act are hereby repealed.

Section 2. Hereafter, all candidates to be voted for by the people, except those for judicial, village, township or school district offices, or at special elections to fill vacancies, shall be nominated either at a primary election, held in accordance with this act, or by petition in accordance with sub-division 3 of section 30, of the statutes of 1898.

Section 3. Primary elections shall be held at the regular polling place in each election precinct in this state, on the first Tuesday in September, 1902, and biennially thereafter, for the purpose of nominating candidates to be voted for at the next general

much less the necessary two thirds or three fifths. Upon the whole, the veto power is one of the most salutary parts of the system of state legislation; for it may be applied to bills which have been smuggled through the two houses without a clear understanding of their intention, or it may be invoked by public opinion as the last opportunity to defeat an undesired measure.

65. Output of State Legislation.

In most state legislatures, distinction is made between public legislation and private bills — that is, bills which apply to only one or to a few persons, and which therefore are based on local or temporary considerations. Many state constitutions absolutely prohibit private legislation, or even legislation intended for a particular city: the Pennsylvania constitution, for instance, has thirty-two sections prohibiting the passage of local and private bills on various subjects. Some cases for relief to a single individual occur, — as, for instance, when a public officer is robbed of public funds; but in general private bills do not interest the legislature, are not examined carefully on their merits, and are passed by a system of log-rolling.

One of the great abuses of legislation is the granting of special charters to banks, railroads, and other corporations. Under a more enlightened system general statutes are passed with great detail, prescribing the form of all banking or railroad corporations; and in order to get a charter these general conditions must be fulfilled.

Taking public and private bills together, the number is prodigious. In the year 1899, the forty-five states appear to have passed more than 5,000 statutes, besides many private bills; the state of Massachusetts in the five years from 1891 to 1895 put upon the statute-book 2,986 statutes; New York, in the one year 1895, passed 1,045 statutes. The result is that within a state the law is constantly changing so rapidly that neither public officers nor lawyers can keep track of it. The details of statutes may be shown by a few examples: one

statute incorporates gun clubs; another prohibits the use of fire-crackers on the public highway; another makes a new charter for a great metropolis; another empowers towns to build bicycle paths; another exempts family pictures from seizure for debt. Bills have repeatedly been introduced into legislatures for the taxing of bachelors; and in one state druggists are forbidden to sell any patent medicines which they have not themselves tested.

In the Southern states especially, there is a large amount of local legislation, — such as bills permitting Harding County to prohibit the sale of liquor, prohibiting hunting on Sunday in Garrett County, authorizing Scott County to tax itself for a railroad, and so on. Everywhere there is far too much legislation as to local governments and corporations: new charters are altered by special acts, followed by amendatory acts, succeeded by partial repeals, until the whole law is in confusion. To obviate this difficulty, it is the habit of most states to codify and consolidate the laws by issuing every few years a volume of revised statutes, from which amended, repealed, obsolete, or temporary statutes are excluded. Many other countries, especially France and those under French influence, have elaborate civil and criminal codes, prepared, like a constitution, in a number of sections, and attempting to cover the whole field of human rights and responsibilities. Such codes simplify the law by superseding all conflicting statutes; but the new laws speedily alter; and under our system of judicial examination any paragraph of the code may require judicial decision before its meaning can be ascertained.

It is of course necessary that, as the community advances, the laws shall keep pace with new conditions. New political dangers arise against which there must be reform legislation, great corporations assume new importance and must be curbed by new laws; but confusion comes from the rapid change in the membership of the legislatures, and the habit of hasty legislation without a working out of all the details.

An effort has for some years been making for agreement between the statutes of various states; and conferences are held from year to year, by commissioners representing the various states, to draw up statutes on such subjects as the execution of deeds and wills and the responsibility for commercial notes: the legislatures are then asked to enact identical laws.

CHAPTER VIII.

STATE EXECUTIVES.

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67. The Governor.

As the legislature is divided into two houses and many committees, so the state executive is broken up into several related parts, — the governor, the heads of the great departments, and the minor executive officers, — often acting independently of each other, sometimes at cross purposes. The governor is

everywhere elected by popular suffrage, although in some states, especially Rhode Island, the legislature may choose if there be no majority.

The term of the governor is in a few states one year only, in about half the states two years, in the remaining states usually four years; in some states he cannot be elected to two successive terms. In practice, popular governors in states with a short term are likely to be reëlected for one or two terms; in Massachusetts, a one-year state, it is an unwritten law that the governor must not serve more than three terms; in most two-year states a governor stands a good chance of being elected for a second term; in a four-year state he is not likely to be reëlected at all.

This has not always been the practice of the states: from 1799 on, four Vermont governors filled thirty-three out of forty-four years; John Hancock was eleven times governor of Massachusetts; Jonathan Trumbull was seventeen times governor of Connecticut; George Clinton was for twenty-one years governor of New York. The only case of the kind within recent years is Robert E. Pattison, who between 1883 and 1895 served two terms of four years each as governor of Pennsylvania, and was a candidate again in 1902.

When the new states were formed, several of them tried the experiment of having an executive board at the head of the state, — thus in Pennsylvania and Massachusetts there was an "executive council"; but by 1790 all had adopted the system of a single head.

The dignity of the office of governor is high. In a few states there are governors' mansions, a convenience which ought to exist in every state. The governor has a salary, ranging from $1,500 a year in Vermont to $10,000 in New York, Pennsylvania, and New Jersey.

The duties of the governor may be classified as political, administrative, and social. As a political officer, he represents the commonwealth in its relations with the federal government

and with other states in the Union; he makes representations of the rights of his state in cases of dispute; he has power to summon the legislature, to advise it, and to veto bills; he may designate a United States senator, in case of vacancy, to serve until the next session of the legislature; and a frequent ambition of a successful governor is to make his office a stepping-stone to the Senate.

The governor has important administrative duties, most important of which are the power of appointment of minor officers and of some department heads, and a circumscribed removal power. As head of the state military system, he has the right to designate a staff, who receive complimentary military titles and who accompany him on occasions of ceremony; he is responsible for the execution of the laws, and may even call upon his military force to put down mobs and insurrections and protect the officers of the government. He supervises other executive officers, may investigate their conduct of business and stimulate them to the performance of their duties; and with few exceptions, the governor has an unlimited power of pardon over offences committed against the state.

Among the social duties of the governor is that of attending public meetings and celebrations, funerals of noted men, the graduating exercises of state universities; of opening fairs and exhibitions; of dedicating buildings and christening ships. Governors are always in request as speakers on public occasions, and frequently find this service exhausting; some excellent governors have died in office because of the fatigue of constant public speaking.

Thirty-three of the states have lieutenant-governors, who in most cases are presidents of the Senate, and occasionally have other small functions. In some states, when the governor is out of the state, the lieutenant-governor fulfils his duties; and in two recent instances they have used this power to make important appointments during absences of a few hours. The lieutenant-governor becomes important in case of the death or

the disability of the governor, because he takes his place during the remainder of the term.

68. State Executive Departments.

In every large community the executive business must be divided; and most governments have either the parliamentary system of an executive committee of the legislature, or the United States federal system of appointive heads responsible to the chief of the state. Only one of the forty-five states of the Union has adopted either of these two efficient systems: in every state, some of the chief executive officers, and in most of the states all of them, are elected, and are often chosen at different times from the governor, to whom they are not responsible. This is perhaps the weakest feature of our state governments, because it makes it impossible to carry on the various departments with due relation to each other, because the governor has little power over officials who are not doing their duty, and because both governor and department heads seek to check each other by securing acts from the legislature.

The principal important state officials are the secretary of state, who has charge of the records and seal of the state; the state treasurer, through whose hands pass the public moneys; the attorney-general, who gives legal advice to the governor and other officers and is responsible for the prosecution of criminal suits; the comptroller or auditor, who is the bookkeeper of the commonwealth; the head of the public instruction of the state; and the adjutant-general, who has direct charge of the militia. In a few states, as Massachusetts, the governor has also an advisory council, the relic of a similar council in the colonies. This body has the right to veto some of the governor's acts, and thus to limit his power without adding to his efficiency.

The reason why the state administration is not better organized goes back to the colonies, which were all jealous of their governors' appointments, and in many cases set up an elective treasurer and sometimes other smaller officers. Hence, in the

early state constitutions the power of the governor was cut down, and other officers were chosen as a check against what, it was feared, might become a despotism. At first the legislature appointed many of these officers, and in some states does so still, — for instance, the superintendent of education in New York State.

With few exceptions, the important executive officers go through the regular process of nomination and choice by general suffrage at a regular election; in Pennsylvania the attorney-general, secretary of state, superintendent of education, and some other officers are appointed by the governor. These officers are all paid salaries, usually too small for the responsibility. The most lucrative office is that of state treasurer, for in some states, either with or without warrant of law, he deposits state funds in banks which will agree to pay him the interest. In case of the failure of such banks, the treasurer is left in a very difficult position.

In addition to the officers just mentioned, there is a host of commissionerships and executive boards, most of them appointed by the governor with the approval of the state Senate. Most of these officers serve for brief periods, and are subject to removal by the appointing power — the governor or the legislature, as the case may be.

In practice, the relation of the governor with other executive officers is one of friendly coöperation, if the individuals feel kindly toward each other; but they may represent opposite parties and have conflicting purposes. The governor can get the public ear through his messages; but deadlocks are frequent between the governor and the treasurer or the auditor or the adjutant-general. The legislature is likely to side with one or the other of the parties; and it is hard to get rid of an elected official during his term, except by the unusual process of impeachment. Minor state officials are responsible to their immediate chiefs, and are out of the province of the governor.

69. System of State Boards.

In every state large executive powers are exercised through boards, a form of state government that is at present much increasing. Some of these boards are highly paid, and the members give a large part of their time to the public service; others are underpaid; others act without pay. The advantage of the board system is that there is a variety of counsel, and an opportunity for representing various sections of the state. One of the few places in the state government where parties are officially recognized is in the so-called "non-partisan" boards, — for example, a board of police, or a board of election commissioners, which must be composed of members of more than one political party. This system in practice works badly, because, so far from being non-partisan, it usually makes a board bi-partisan and introduces a permanent opposition; or else the members come to an understanding that the patronage and privileges shall be divided between their parties. Of all executive officers, "non-partisan" boards are the least satisfactory.

Many boards are organized for some particular state service. There are 25 boards of railroad commissioners, more than 30 boards of health, 20 fish commissions, about 25 bureaus of labor, besides gas commissions, police commissions (organized in large cities under special state law), prison commissions, boards of education, and the like. In addition there are many boards of local state institutions, such as trustees of lunatic asylums, penitentiaries, and normal schools. In the commonwealth of Massachusetts alone there are more than three hundred persons who are members of various executive state boards, each of which feels a considerable degree of independence within its own limits.

The organization of boards is everywhere much the same: a chairman, commonly designated by the appointing power, sometimes elected by the board; a secretary, in many instances

the executive officer of the board, and in rural states likely to be the only salaried member. The boards have records, offices, clerks, and small allowances for travel and incidental expenses; and each has the right of investigation within its province.

The result is the subdivision of public business into small blocks, instead of its concentration into a few large departments, as is the case under the national government; and the boards act independently of each other, and often of the governor. Even if the governor has a removal power, it is difficult, sometimes impossible, to fix responsibility among a board of several persons. On the other hand, the commonwealth has the service of a large number of public-spirited citizens, sometimes holding their places for many years together.

Discontent with the board system has led to some concentration of the powers of separate small boards. Thus the care of the insane, the prisoners, the feeble-minded and defective, in about one third of the states in the Union is subject to the general supervision of a single board of charities and corrections, which examines the accounts of all the local boards, and sees to it that the laws are observed and that humane and intelligent treatment is secured.

70. State Officials.

Under the general control of the governor, the heads of the large departments, and the executive boards, are the various classes of subordinate officers, principally employees of the executive departments, supplemented by the much larger body of employees in state institutions. In general these persons are appointed by the head of their department: the attorney-general appoints his subordinates, the state park board the park laborers, and the state treasurer his clerks. The largest body of state officials are the teachers in the public universities and schools. The instructors in state universities are commonly appointed by a board of regents; in state normal

schools, by local boards of trustees or a state board of education; in the public schools, — primary, grammar, and high, — they are almost invariably appointed by the local authorities. It is difficult to estimate the number of employees of a state; but, leaving out of account municipal and local officials, it probably averages 1,000 in a state, or nearly 50,000 in all.

Another class of state officials are the local officers, who will be considered in connection with local government. They are created by an emanation of state authority, and so far forth belong to the commonwealth service. Furthermore, in a few states the local officials, even the mayors, are appointed by the governor; and in some cases county officials are appointed by the legislatures.

State officials frequently hold for a brief specified term; in most of the states they are subject to removal for any reason that seems good to the appointing power. If a new governor appoints a new set of commissioners, they will almost infallibly displace a large number of their subordinates; hence the tenure of state office of any kind is usually insecure, and most people prefer the national public service.

71. Civil Service Reform in States.

The purpose of government is presumably efficient public service at the least cost and with the least limitation of personal liberty to that end. The state constitutions lay down principles, and the legislatures pass statutes; but the end is not served unless some executive power puts them into operation.

The state executive has two kinds of power. (1) The carrying out of duties assigned by the constitution or by statutes: if a legislature enacts that a state capitol shall be built by a commission appointed by the governor, no capitol will be built unless the governor appoints the commission. The commission makes contracts, and the contractors are compelled to carry out their agreement. (2) Administrative duties: somebody must regulate the internal relations of officers

of government, and find means of securing the performance of duty. Administrative law in most foreign systems of government is recognized as separate from either common law or constitutional law; in the United States, administrative relations exist and are parts of the system, but are not separated from the ordinary constitutional law. The most significant part of administration is what we call the civil service, — namely, the body of non-military persons who serve the various agencies of government, national, state, and local.

In colonial times, subordinate executive offices were commonly held for a long time. The Revolution displaced most of the holders of such offices, and thus suggested the system of political removals. In Pennsylvania and New York, the system of political proscription was well developed by 1800: when the Livingstonians got possession of the state of New York, the Clintonians were proscribed; when the Clintonians came back, the Livingstonians went out. In every state in the Union the system speedily became rooted, so that now the choice of a new governor may result in the dismissal of the fireman of a court-house boiler, or of the woman who washes the steps of the state capitol. Such frequent changes demoralize the service, since good conduct and attention to business do not keep a man in office; and the bestowal of public office becomes a subject of bargain and intrigue, till political campaigns are sometimes carried on for the main purpose of controlling the patronage.

To meet this difficulty, two states of the Union, New York and Massachusetts, have adopted an elaborate system of "civil service reform," by providing that appointments to the minor posts be made by another method than by political influence on the heads of offices. The reform method, commonly called the "merit system," includes two essentials: first, that unintelligent and uneducated persons shall not get in at all; secondly, that intelligent persons who wish to serve the state shall have an equal chance to seek appointment. Under the

old-fashioned "spoils system," public office was absolutely closed to adherents of the party out of power, and also to thousands who voted with the party in power but had not the personal friendship of the politicians. The only practical substitute is competitive examination.

The one state in which this reform is established by the state constitution is New York; in Massachusetts it depends upon a strong series of statutes, backed up by public opinion. In both states examinations are held for different kinds of employment, as clerkships, inspectors, watchmen, attendants in hospitals, and the like. The examinations deal not only with book matters, but with practical points: for instance, a candidate for the police must stand a test of his physical condition, and of his quickness and capacity to deal with a new problem. The list of persons who have successfully taken the examination is arranged in order of their marks; and when a vacancy occurs, the three highest names are certified to the appointing power, who must choose one of the three. Since the likelihood of a particular favorite being one of the three is small, the appointing power, if he knows nothing of the three candidates other than is shown in their examinations, will usually choose the highest. After entrance into the service, an appointee remains on probation for a brief period, before having permanent employment. For the employment of laborers, where any intelligent, able-bodied man will answer, there is a registration list, from which alone appointments shall be made to the state service.

The statutes absolutely forbid anybody from demanding contributions for political purposes, and also forbid an examination into political or religious opinions. The principal exception to the provisions of the system in both states is that of veterans of the Civil War, who have a preference for appointment if they pass the examinations, and, in Massachusetts, in a few cases without examination. The merit system does not give the employee an indefinite right to his office: he is subject to removal if he is incompetent or insubordinate.

The system is not easy to administer; loopholes are constantly found in it by people who wish appointments by favor rather than by merit. Large numbers of public servants are not included within the laws at all; but it has been conclusively proved that appointments made by this method secure people who are as likely to be good public servants as those appointed simply by favor, that the pressure upon appointing officers to make political appointments and removals is much relieved; and that by putting offices out of the control of a temporary majority the opportunities of political corruption are reduced. Neither New York nor Massachusetts shows a desire to return to the old condition of things, and the reform is likely to spread to other communities. Similar systems in local governments and in the national service will be described in their places.

CHAPTER IX.

STATE COURTS.

72. References.

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73. State Judges.

In all civilized governments the courts play the important part of applying to specific cases the principles of tradition, written constitutions, and statutes. If, for instance, a statute provides that a widow shall have a third part of the personal property of her deceased husband, and the executors refuse to transfer it to her, the widow may then bring suit against them for her share; and the liability to suit prevents their giving good title to anybody else, besides which they are subject to damages if they refuse to turn it over to the legal owner. In declaring what are the legal rights of the parties to the suit, the court must point out and apply the statutes, constitutions, and traditions which govern the descent of property. The courts

have, therefore, more opportunity than the two other departments of government to bring the law home to the case that it fits.

The basis of the bench is the bar, — that is, the body of practising lawyers, from whom have come most of the distinguished American statesmen, among them Hamilton, Jefferson, Daniel Webster, Henry Clay, and Abraham Lincoln. Lawyers are in the main conservative people, accustomed to respect established precedents and to depend upon written and printed records. Until a few years ago it was easy for a young man to get enough law to be admitted to the bar; at present, many states insist upon rigorous written examinations, intended to secure at the outset a considerable knowledge of legal principles.

The constitutional qualifications for state judges are few. Some states require that a judge shall be learned in the law; and in practice judges are always taken from the bar. In some states judges must be of mature age, and in all states they are likely to be at least in middle life. Judges are not allowed to sit on any case in which they have a personal interest.

How are judges designated? In colonial times the judges in eleven colonies were appointed by the governor or the crown, and in two by the legislature; in only one of the thirteen states were the judges elected by the people. Gradually, however, the principle of popular election spread, until now in 32 states judges are elected by the people, in 5 states by the legislature, and in 8 only are they appointed by the governor. Upon the face of it, an elective judiciary is less likely to be learned, wise, and impartial than an appointive: the most popular man is not always the wisest jurist; and it is human nature for a judge to remember that his chance of reëlection depends upon the kind of decisions that he renders. In 1787 the Rhode Island legislature refused to reëlect the old bench of judges because it had made an unpopular decision on paper money. In Illinois, in 1873, a judge was defeated at the end of his term because of

his opinion upon a question of railroad rates. Since the state Supreme Court has always more than one judge, some instances have occurred of "packing" a court in order to produce a particular decision. Thus in 1841 Stephen A. Douglas was put upon the Supreme Court of Illinois, in order to make a majority for a decision with regard to the vote of aliens.

Nevertheless, the elective judiciary works better than might have been expected. In the first place, nominations of judges are carefully scrutinized, and a ticket otherwise poor is sometimes strengthened by putting on respectable judicial candidates. Secondly, in some states, especially in New York, the Bar Association pays a great deal of attention to judicial nominations, and sometimes formulates a strong protest against persons supposed to be unfit. In the third place, experience on the bench is very apt to steady those who previously have been political partisans.

The term of judges, whether appointive or elective, is in most states too short. In Vermont they are chosen by the legislature for only two years; in Pennsylvania the term is twenty-one years by election; in only four states — Delaware, Massachusetts, New Hampshire, and Rhode Island — are judges appointed for life, or virtually for life. The compensation of judges is commonly much less than the ordinary professional income of good lawyers. In Vermont the Supreme Court judges get salaries of $2,500; in New York there are some salaries of $17,500 a year. In a few states there is a provision for the retirement, upon a pension, of judges who have served long and faithfully.

In some states judges can be removed by a joint protest of the legislature, but the more common method is by impeachment before the state Senate. There have been about forty such attempts to remove, and a few judges have actually been removed; in other cases judges have resigned under impeachment in order to avoid conviction. In New York one judge was impeached, and another compelled to resign, for violence

and illegal behavior on the bench ; one was a Tweed Ring man, the other a creature of James Fisk, Jr., in his attempt to steal the Erie Railroad. Executive officials, as well as judiciary, may be impeached or removed ; and one Western governor has thus been removed from office. With an elective judiciary, however, the simplest way to get rid of a bad man is to mark him for defeat at the next election.

74. State Courts.

State judges are organized into courts arranged in a progressive series. In Massachusetts, for instance, there is a system of police and municipal courts in large cities, with additional justices and two special justices, each sitting in a separate place ; in each county there is also a probate court, in charge of wills and inheritances ; in each county there is a district court, with a district attorney, and the judges are assigned according to the needs of the service ; above this is a superior court, the eighteen judges of which have a salary of $6,500 each ; above this is a supreme judicial court, with seven judges, at a salary of $8,000 each. The chief justice in each of the two systems has $500 extra salary. Appeals may in general be brought from district courts to the superior court, and from the superior court to the Supreme Court ; they may also be brought from the probate court to the Supreme Court.

Under this system, small cases usually fall first to a lower court ; then, if appealed, to the middle jurisdiction, whatever it may be ; and thence to the highest state court. The result is unification of decisions throughout the state ; and the Supreme Court takes pains, so far as possible, to follow its own precedents, so that there may be a traditional unity.

The details of organization and administration, the methods of appeal, the kinds of question which may be brought in original suit before a lower and a higher court, the relations of the general system of state courts to municipal courts, — all these questions are subject to great variations from state to state.

Everywhere the principle is the same: that questions of law shall be transferred from court to court, up to the highest state court; and especially that questions of personal rights and other constitutional privileges shall be eventually settled only by the highest court.

In addition to the regular courts, there are in most states justices of the peace, with jurisdiction over small offences and suits; these may be considered, perhaps, as a fourth system of inferior courts. In some states there is a provision for courts of conciliation, or for tribunals of arbitration; but these are rather a means for umpiring disputes than for settling them under the principles of law. Probate courts act with little formality where there is no opposition; but in hotly-contested will cases they may spend days in hearing testimony and arguments, and make decisions on questions of law, subject to examination by a higher court.

75. Criminal Law and Jurisprudence.

Perhaps the most obvious purpose of the courts is to try criminal cases and other offences against the community. Such cases may be suggested by the injured person or his friends, but must be tried by a public prosecutor. The usual penalty is fine or imprisonment, or both; and in most states the death penalty for the most aggravated crimes.

Crimes are usually defined by statute, but the laws of the states are very different in the minuteness and carefulness of their distinctions; of course the community with the highest standards has the most statutory crimes. Where no distinct statutes have been passed, offences in most states may be punished under the common law, — that is, the nature of the offences and the penalty are to be ascertained from the practice of the courts in England and America.

The municipal and police courts have to do almost solely with petty crimes, — drunkenness, fighting, destruction of property, and the like; and they have a summary process with very

speedy examination of witnesses, so that a trial often occupies only three or four minutes, and the penalty is at once fixed and the punishment begins. In most of such cases the guilt is obvious, or the prisoners are too ignorant of the laws to protract the matter; yet on questions of law appeal practically always lies from the municipal court to some higher court. The middle courts of the regular state series commonly take cognizance of the most serious crimes. Here, as cases may involve life and death, trials are sometimes long and searching, and may last two months or more. The highest courts seldom examine into the facts in criminal cases, but pass on questions of law which may be appealed to them.

In the system of criminal jurisprudence are deeply imbedded the principles of indictment and trial by jury. Indictment is the process of preliminary examination, usually by a grand jury, of the evidence against a man charged with crime; if the jury sees reason to send the case to trial, it "finds a true bill," and the prosecutor must bring the matter to trial. In justice courts and municipal courts the jury is usually dispensed with, although in most states it must be had if the prisoner demands it. The more serious crimes are always tried by a "petty" jury, the common rule being that there must be twelve jurors and a unanimous verdict; but several of the far Western states allow a decision by ten, or even fewer, jurors out of the twelve. In most states a jury trial may be waived if the prisoner so desires. The jury system is at present the subject of much complaint: jury duty is tedious and habitually avoided by busy men; the professional juryman is unsafe; and in many kinds of cases, especially those having to do with liquor-selling and strikes, twelve men cannot be found who will unite in a verdict of guilty.

In all important cases the state is represented by a prosecuting officer, whose duty it is (1) to secure evidence to justify a warrant for the arrest of a suspected man; (2) to present evidence to a grand jury which will induce it to bring

in an indictment; (3) to produce witnesses and to marshal the evidence at the actual trial. Everywhere in America prisoners are allowed to employ counsel, and if they have none, the court will make assignments in serious cases. The court designated a well-known lawyer to appear in behalf of the assassin of President McKinley in 1901.

The ordinary punishment for aggravated crimes in the United States is imprisonment, for terms varying from one hour to a life sentence. All sentences for terms of years are subject to a deduction of about one fifth for good conduct while in prison; and the average of long sentences is much brought down by the frequent use of the pardoning power, so that prisoners under life sentence are said actually to average about ten years in prison.

The former cruel and brutal punishments for crimes have officially disappeared entirely in the United States: tongue-piercing, ear-slitting, pillorying, branding, and the like are no longer ordered by the courts, although in Delaware public whipping is still a penalty. There is, however, a lamentable practice, amounting almost to a system, of so-called "lynch law," which means that people (in the Southern states usually, though not invariably, negroes) shall be seized by a mob and, if suspected of aggravated crimes — including rape, murder, arson, and shooting with intent to kill — be put to death by shooting or hanging, or in many instances by burning at the stake or by other tortures. It need hardly be said that lynch law is neither law nor justice, since it is executed in a period of great excitement, without any proper process for ascertaining whether the person charged is guilty; and the fierce and vindictive punishments not only tend to brutalize those who take part in them and the community which allows them, but do not seem to prevent the crimes.

76. Civil Law and Jurisprudence.

Much greater in number than the criminal proceedings are the civil suits of every kind. In general, the jurisdiction of the courts extends to all subjects regulated by legislative enactments; but in many instances, where there is no positive statute, the court takes the principles of common law. In all the states but two or three there is a system called "equity," which is a special kind of legal process, originally intended to furnish a speedy remedy where the common law was roundabout or inadequate. The difference between law and equity is not so much in legal principles as in the way in which they are enforced: courts of law enforce their judgment against the property of the defendant; courts of equity against his person, by commanding him to do or refrain from doing a certain thing. The penalty of his disobedience is punishment for contempt of court. Some states have special chancery (equity) courts; in others, equity proceedings are held by the regular courts.

The prime principle with regard to civil jurisdiction is that the court must have a case before it. In a few states the legislative or executive officers have the right to ask the Supreme Court for an opinion upon a proposed measure; but, without some such constitutional requirement, judges refuse to give decisions in cases which are not argued before them so that both sides may be represented.

The courts attempt to follow previous decisions involving the same principles: thus the lower Kentucky courts will try to follow the decisions of the Supreme Court of Kentucky, and the Supreme Court of that state will usually follow its previous decisions. When no decisions can be found exactly in point, lawyers and courts refer to decisions of other states, or of the United States, or of England. Hence the skilled and successful lawyer is he who, by his knowledge of decisions already rendered, can form a probable surmise as to the result of a given case; and he will dissuade clients from entering suits not likely to be sustained.

The subjects upon which suits may be brought are innumerable. Perhaps the most important branch of the law has to do with real property, — the holding of land, and the transfer of title by sale, inheritance, or will. Another source of litigation is the collection of debts, either to ascertain the amount justly due or to attach the debtor's property if he declines to pay. The great development of corporations of every kind, especially railroads, has led to an immense body of decisions as to what constitutes membership in a corporation, what rights corporations have to acquire and dispose of property, and especially how far corporations are acting within or beyond the charter which gives them existence. Another great branch of law concerns "torts," or injuries and damages. Perhaps the most important function of the courts is to decide on the powers and relations of officers of state and municipal governments.

The methods of civil court business are much like those in criminal law: jury trials are very common on questions of property, and especially on questions of personal damage; both sides are usually represented by counsel, although any man has the right to appear in his own behalf in a suit. Testimony is introduced, and there is a vast accumulation of precedent and practice upon the question of what is and what is not proper evidence; for example, hearsay is commonly not legal evidence, — that is, A may tell what he saw, but not what B told him that B saw. Most evidence is given in open court, with opportunity for cross-examination; but "depositions" — that is, sworn testimony taken down in writing — are admitted under some circumstances. Each side has the right to secure a "subpœna" — that is, a legal summons to appear and give testimony — and witnesses may be compelled to appear and testify. Wives are not obliged, in most cases not allowed, to testify against their husbands; and lawyers, physicians, and ministers are usually exempt from testifying on matters intrusted to them in professional confidence. When the testimony is all in, the lawyer on each side argues the case; and then, if it is a jury

trial, the court sums up the evidence in a "charge," in which it informs the jury what the law is and summarizes the evidence. In some states the jury insists also on deciding for itself what the law is.

When a suit is once decided, it is very common forthwith to move for a second trial before the same court, on the ground of informalities; and in that case the whole process must be gone through a second time, the same witnesses summoned, often at great expense to the parties. If any considerable amount of property is involved, or if important principles come in, it is very common to carry the case up to the next higher court in one of two methods. One way is by appeal, under which the whole case is tried again, the evidence heard, and the law laid down by the upper court, with a jury if demanded. The much more common method is by writ of error; that is, one of the parties sets forth that the judge in the lower court has made mistakes in his statement of the law, and the upper court is therefore asked, not to go through the whole case again, but on the basis of the errors to notify the judge of the lower court that he must reverse his decision. In such an appeal, the question comes first on the particular points claimed to be erroneous; but the upper court may, and often does, go into the whole case.

Important suits are likely to be appealed the second time from the middle courts to the state Supreme Court, usually on writ of error; and the judgment of this court is final, unless cause can be found for transferring the suit to the federal courts, where again it may go through two stages. It is therefore perfectly possible that a man whose property is wrongfully claimed by another will be compelled to fight his case through six different suits before the question can be finally adjusted. In such long protracted litigation the richer party is most likely to keep up the contest.

The courts are not entirely confined to the decision of contested cases; they also issue writs, which are intended to be

simply preliminary to a suit. Such are the writs of "habeas corpus," which have been described above; the decision takes place only after the person responsible for the confinement has had an opportunity to explain. The writ of "error" just described is not technically a decision, but a direction to a lower court to make a decision. The writ of "quo warranto" is a means of compelling a corporation to show whether it is acting within its charter. The writ of "certiorari" directs a lower court to send up to a superior court the record of a proceeding. The writ of "mandamus" is directed to some corporation or public official, instructing him to perform an omitted duty. The writ of "injunction," now perhaps the most frequently used, is a decree rendered by a court of equity commanding the defendant to do, or refrain from doing, a certain thing, — for instance, not to put up a building which is claimed to be on another's land, till the title can be settled. In the former case it is called a *mandatory injunction*. The injunction may be temporary or permanent. A temporary injunction is issued in cases where the acts of the defendant are causing irreparable damage. The usual practice is for the court to call upon the defendant to show cause why the temporary injunction should not issue. If he fails to do so the court will issue the temporary injunction. In the final hearing as to whether the injunction shall be made permanent, full opportunity is given to both sides to be heard.

77. Judicial Control of Executive Officials.

In most continental governments — as, for example, France — the principle called "separation of powers" means that legislative and executive departments are separated from each other: what the French Chamber and Senate unite in declaring a statute, must be obeyed by everybody; if the act of an executive official is contested, a court composed practically of his official superiors declares whether he is in the right.

The American idea of "separation of powers" is absolutely

different. Our courts may not only decide upon their own jurisdiction and rights, but may also act as administrative courts, and even decide upon the validity of statutes: the final authority upon the legality of many legislative and executive acts is not in the highest executive or legislative bodies, but in the courts.

The state governor and other officers have not sufficient authority to appoint and remove officials, and find it hard to compel minor officials to do their duties. This necessary service is performed, although imperfectly, by the state courts; and to this end they freely use their power of issuing writs. For instance, quo warranto is invoked to compel an official to vacate an office to a duly-designated successor; or mandamus to force him to pay legal salaries; mandamus is rarely issued against the governor, but constantly issued against local officials, mayors, city treasurers, auditors, comptrollers, and the like; and there has been a recent instance in New York City where mandamus was issued to compel members of the city council to meet and vote bonds for a legal debt. The courts also frequently issue injunctions against officials, to prevent their issuing documents and thus creating vested rights before the questions at issue can be reached in regular suit which will test the questions of law involved.

The result of the whole system is that the courts, and not the superior state executive officials, find means to compel a public officer to do his duty. The penalty of a neglect is contempt of court, — that is, imprisonment at the discretion of the court without further trial, — and the fear of this penalty is almost always sufficient; or criminal suit may be brought for malfeasance in office.

Another frequent method of judicial control of the executive is through ordinary suits brought by individuals. In France, if a suit of this kind arises between an individual and a functionary, it is tried by a special administrative court, presumably in sympathy with the official. In the United States such a case is

habitually tried as a question of private law, without any reference to the public station of one of the parties. For instance, a tax collector levies an illegal tax on a building; the owner refuses to pay, whereupon the collector seizes the building and prepares to sell it to satisfy the tax; suit is then brought by one side or the other for the possession of the property; and in deciding who is legally in possession, the courts must incidentally hold that the tax either is or is not valid. Such cases occur by thousands every year, and enable the courts to define very carefully the actual powers and responsibilities of public office.

78. Declaring Statutes Void.

The English theory of government, soon transferred to the colonies, was that a law once made controls everybody, including the crown and the courts: the attempt of James II to set up a dispensing power, and to relieve certain persons from acts of Parliament, brought about the Revolution of 1688. In a few recorded cases, English courts declined to apply an act of Parliament because it was contrary to natural justice; but English courts for at least two centuries have accepted the latest act of Parliament as superseding all previous conflicting acts. In the colonies, statutes were in some cases set aside by the colonial courts because not in accordance with justice; but it was only when the system of written constitutions was introduced that the necessity for decisions on the validity of statutes became evident.

Who is to decide whether the law does or does not contravene the constitution? If the legislature has this power it will of course hold its own law good, and the will of the legislature will override the restrictions of the constitution. The governor and the other executive authorities must decide for themselves whenever the question arises; but such decisions are likely to affect only those laws involving the exercise of executive power.

The state courts are obliged to set one kind of law against another, because one sort may be invoked by one party, and

the other by the other party. The issue of the power of the courts was first distinctly raised in 1780, in the New Jersey case of *Holmes* v. *Walton*, when it was held that an act of the legislature was contrary to the constitution of the state, and hence was no law; the legislature speedily changed the law to agree with this decision. When the federal constitution of 1787 was framed, providing for direct relations with individuals and furnished with a strong supreme court, a new feature was introduced into this question, inasmuch as the federal constitution, and acts and treaties made in pursuance thereof, were to be the supreme law of the state and binding upon the state courts. The intention of this clause was to authorize and compel a state judge to decide whether a state act was in accordance with the federal constitution; and the history of the convention shows clearly that it was intended that the federal courts should have the power to nullify state statutes that were not in accordance with the federal constitution.

There is no evidence that the convention faced the question whether national courts could also nullify national statutes; but in 1803, in the decision of *Marbury* v. *Madison*, it was held that part of an act of Congress was unconstitutional, and therefore not binding; and in the case of *Fletcher* v. *Peck*, in 1810, a state statute was for the first time distinctly held void by the United States Supreme Court.

This principle was slowly adopted in the states with reference to their own laws. In most state constitutions it does not appear as a distinct right conferred by the constitution; it simply is tacitly held to be necessary, because in deciding specific cases the courts must take cognizance of the laws that apply, and if two conflicting laws are invoked it must decide which is valid. If one law appears in a constitution amendable only by a special process, then that law must prevail against any subsequent contrary statute.

This power to review legislation is one of the things which give state courts their highest dignity and importance, and

make state judges the guardians of personal as well as of property rights. Many courts exercise this great power with hesitancy; if possible, they decide the case without raising the issue, or they attempt to put such a construction on the statute that it will be agreeable to the constitution. Nevertheless, every year scores of state laws are disallowed and set aside.

Consciously or unconsciously, the power is used to prevent uncommon or new kinds of law: for instance, the elaborate labor legislation throughout the country has been much toned down by court decisions disallowing or modifying provisions of statutes. It is impossible entirely to separate personal, or even selfish, methods from the legal duty of standing by the great and fundamental law; the practice of reviewing statutes, however, leads to a very strong respect for the constitution. If the community is sufficiently interested, an unrighteous decision can be set aside by later amendment to the constitution, which the courts must then acknowledge and apply.

We do not always realize that courts have as much right to declare acts of executive officials void as they have to pass on statutes: the processes of review, mandamus, injunction, and the like, which have been discussed already, are often simply a declaration of the court that what the executive has tried to do is not in accordance with the constitution. In form the decision of a court on constitutional or other questions binds only the parties to the immediately pending suit, but it is notice of the law to all others: if a mayor makes a contract for a bridge in a way forbidden by the constitution, and the courts hold that contract void, the contractor cannot get his money; if another mayor attempts to make a second contract of the same kind, the contractor from the beginning has no legal reason to expect to get his money, and hence will probably hold off. In this way, decisions which directly involve small amounts or slight rights become landmarks of the constitutional power of the state governments. If a poor woman, who is put off a street car because the conductor will not recognize her transfer, brings

suit and gets a judgment against the company, it may lead to a reform of the whole transfer system for the benefit of thousands of people.

On the whole, the system of declaring statutes and executive acts void works well; but it throws immense responsibility upon the judges, who after all are human beings. The fact that they have such vast, and in many cases such final, power is simply another argument for securing judges by appointment, for giving them long terms and good salaries, so that men of the highest integrity may be attracted to and may remain upon the bench.

Part IV.

Local Government in Action.

CHAPTER X.

RURAL UNITS OF GOVERNMENT.

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80. Creation and Functions of Rural Governments.

Within each state the people determine how they will exercise the functions not reserved by the federal constitution, and everywhere they choose to commit large responsibility to the local units. Sometimes they act through the state constitutions; but details are to a large degree determined by the legislatures, and therefore the powers and functions of the local governments are constantly subject to change.

To prevent too rapid alteration, some states have a constitutional provision that no special laws shall be passed for counties or towns or cities; but these provisions are easily avoided by passing a law for classes of communities, — say, counties of less than 50,000 inhabitants and more than 49,000, or cities of over 30,000 people, there being only one such county or city. In Ohio, in 1902, the whole machinery of city governments was upset by a decision that such classification was unconstitutional.

The oldest and most frequent type of local government is the ordinary rural government, of which there are three varieties: (1) small special divisions, as school and fire districts, boroughs, and villages; (2) towns or townships; (3) counties. The boundaries of such jurisdictions are in many states subject to alteration by the legislature, without a vote of the inhabitants. The type of government is partly set by constitution or statute, and is partly so far traditional that sweeping changes would be resisted.

The most noticeable feature of rural governments is that there is no exact separation of powers, such as exists in state and national governments: town-meetings are little legislatures, yet exercise many executive functions; county executive boards make by-laws and lay taxes. The functions which ordinarily

fall to such governments are schools, roads, bridges, the poor, fire protection, water supply, and in some communities electric lighting, public libraries, and the like; and the assessment and collection of taxes for such local purposes. They have power also to make local ordinances for public order, — as, for instance, against riding bicycles on the sidewalk. It will be seen later that such functions are much more important in cities, which have to provide for a complicated and numerous population.

81. School Districts, Villages, and Boroughs.

The smallest unit of local government is the school district, which in many states has authority to raise money, to lay taxes for the carrying-on of district schools, and even to issue bonds for the building of schoolhouses. A public meeting of the voters is held; and in New England there is a clerk, a treasurer, a moderator, and a board of district-school directors. While the immediate control of the school district gives experience and confidence to the people, modern education requires grouping into larger areas, and demands trained teachers such as can hardly be secured by the district system.

Another very common unit is the village, which is an incorporated body like a city. In New York, the village government is a body of trustees with a president, and there is a village treasurer, a clerk, a collector, and a road commissioner. A similar unit is the borough, found in several states; it has existed in New York and Pennsylvania ever since colonial times, and therefore ranks with the town and the county as one of the forms of traditional government. Usually the borough has a population of two or three thousand; but borough government is rather cumbrous: in Pennsylvania, for instance, it includes a school board, a board of health, and a poor board, besides burgess or mayor, treasurer, secretary, chief of police, road commissioner, tax collector, and high constable. The borough of Jacksonville, Pennsylvania, has had to provide these officers out of 82 inhabitants.

Both villages and boroughs are usually withdrawn from the town or township in which their area is situated, and have direct relations with the county and the state. Probably the best form of borough government is that of a single elective council. Whenever a village or a borough arrives at a sufficient population, it is usually allowed to become a city. In Maine and other states are various irregular local units not having a definite organization, called plantations, districts, and gores.

82. The Town System.

True rural government is best expressed by one of the three most prevalent systems, — the town, the county, or a combination of town and county. Of these the town, or township, is perhaps the most interesting.

The New England town has a great tradition behind it, inasmuch as in Plymouth, Massachusetts, Connecticut, New Haven, Rhode Island, and New Hampshire, towns were organized even before the colonial governments, although as soon as the latter were founded they at once asserted their right to prescribe duties and grant privileges to the towns. For a long time supposed to be a creation of the colonists, it is now established that the New England town was a reorganization of that type of English parish which had a general parish-meeting of rate-payers. Many of the present New England towns are simply old colonial towns continued; many more, however, have been subdivided and set off at various times by the state legislatures. In population they vary from Cambridge, New Hampshire, with 17 people, to Warwick, Rhode Island, with 21,000 people. Some of them are remote little agricultural communities; others are bustling and prosperous manufacturing places. Town government in New England includes three elements, — town-meeting, board of selectmen (pronounced sélectmén), and minor town officers.

The town-meeting comes at least once a year, and usually, by adjournment or special meetings, much oftener. It must

be called by a warrant printed or posted beforehand, specifying the business; and no matters can legally be introduced which do not appear on that schedule.

For the accommodation of the town-meeting there is always a town hall, sometimes built at the cross-roads away from a village. To direct the meeting, a moderator is chosen; in many towns the same man serves year after year in that important office. The next officer is the clerk, commonly reëlected from year to year. The thing most characteristic of a town-meeting is the lively and educating debate; for attendants on town-meeting from year to year become skilled in parliamentary law, and effective in sharp, quick argument on their feet. Children and others than voters are allowed to be present as spectators. In every such assembly, four or five men ordinarily do half the talking; but anybody has a right to make suggestions or propose amendments, and occasionally even a non-voter is allowed to make a statement; and the debate is often very effective.

The development of manufacturing in New England has pulled town government awry. A manufacturing section may spring up on a water-power in one corner of the town; and the interests of the factory owners and operatives are different from those of the farmers. Hence arise constant squabbles in town-meetings, until the new community gets itself set off as a separate town. The farmers naturally resent this attempt to remove a taxable property out of their jurisdiction, and also the efforts of summer residents to secure a town of their own; but, under the universal American principle that a man can have but one vote, summer residents usually have no voice in the town-meeting of their preferred abode, and accept the taxes imposed by the vote of their neighbors.

In very early times it was found that business had to be done in the intervals between town-meetings; and hence grew up the system of "townsmen," now usually called selectmen or trustees, — an executive board of three to nine members, chosen

for a year in town-meeting; it holds frequent sessions, and has authority to make contracts and payments under votes of the town-meeting. For school purposes, a separate committee or board is provided.

Most town-meetings choose a host of minor officers, some of them holding queer titles. The town of Middlefield, with 82 voters, in 1895 elected one clerk, three selectmen, one auditor, one treasurer, one collector, two constables, one road commissioner, three school committeemen, one superintendent of schools, three trustees of the public library, and one town librarian, — a total of 18 town officers, leaving 64 unlucky voters without a single office.

The town and township also exist in New York and Pennsylvania, but there the main functions of government are divided with the county. In most of the Western states there is also some form of town or township government, but the unit of those states is almost invariably a "public land township," — that is, an area of six miles square, not having the historical coherence of the old New England towns. In the South, towns were made units in some of the reconstructed states, but all of them have again been abandoned; and the town-meeting has never taken root, perhaps because the population is so scattered that it is difficult for voters to get together.

One of the notable things about town government is that the state legislatures constantly throw new duties upon town officers: they have to assess and collect state taxes; they have to carry out state laws for the prevention of contagious diseases; they must keep records of births, deaths, and marriages; they must apply election laws; they have a hundred other important functions. The state follows them up with threats and fines for neglect of duty; in some states the state executive may vacate town offices for neglect; and everywhere the state courts grant mandamus and other writs to compel town officers to do their duty.

The principal functions of the town are performed in town-

meeting, and may conveniently be classified as follows: — (1) The election of town officers for the next year, a vote commonly taken by ballot; formerly representatives to the state legislature were also chosen in town-meeting, but now it is customary that they should be voted for at the regular state election by ballot. (2) The control of town officers, and the discussion of their oral or printed reports, — often the subject of animated criticism. (3) The general legislative function is the making of by-laws, — that is, local ordinances, such as forbidding the destruction of town property or the running of animals at large. (4) An especially important group of duties is the financial, — as the making of appropriations for town purposes, especially schools, and the laying of taxes for those purposes; this includes also the opening and maintenance of highways, a duty poorly performed. (5) All town-meetings exercise a variety of social functions, including many petty matters: for instance, the Worcester town-meeting in 1779 voted not to read the Psalms line by line before singing them; and one town-meeting voted to indemnify an unhappy person who had unwittingly received a counterfeit bill. The question of the sale of liquor is one of those most frequently brought up at town-meeting, and the prosecution of liquor-sellers is often authorized.

There was a time when the town-meetings had also large political functions: they instructed their representatives upon matters of great consequence, and they frequently passed votes on pending political questions, as, for example, the vote of the Boston town-meeting in 1729: —

"That you Continue to Pay a due Regard to His Excellency Our Governor, and that you Endeavor that He may have an Honorable Support, But we desire at the Same time That you use your utmost Endeavor That the Honorable House of Representatives may not be by any means Prevailed upon or brought into the Fixing a Certain Sallary for any Certain time, And if your Pay Should be diverted from you Depend on all the Justice Imaginable from this town whom you Represent."

The variety of the town functions may be illustrated by an abstract of the warrant of the town of Brunswick, Maine, in 1899. It included election of officers and reports of former officers; appropriations of money for schools, highways, fire department, and contingent expenses (lights, abatement of taxes, Memorial Day, public library, street sprinkling); disposition of real estate; by-laws, public buildings, sale of liquor, numbering of dwellings, bicycle paths, electric lights, purchase of coal, the town farm, the town cemetery, a larger drinking-tub to the fountain, and the town hearse.

83. The County System.

The rival system of rural government is that of the county. At the time of colonization, county assemblies had entirely ceased in England, and the shire government was the Court of Quarter Sessions, a board of magistrates appointed by the crown for each county. Such a magistrate was Justice Shallow in *Merry Wives of Windsor:* "Justice of peace and 'Coram.' — Ay . . . and Custalorum." In the New World a similar organization was founded in colonial times, including an appointive county board. Since the Revolution, elective boards have been usual except in North Carolina, where the legislature appoints the county officers.

The number of counties varies from 3 in Delaware, to 243 in Texas; the most populous county is New York, with 2,050,000 inhabitants. The average area of a county, except in the thinly-populated Northwestern states, is from 500 to 800 square miles; and the average population outside of the cities is somewhere from 10,000 to 20,000. Of course a popular assembly is impossible for such large districts. In place of it, is set up the board of elective commissioners, the county treasurer, school superintendent, sheriff, registrar of deeds, and many other officers; in the so-called "compromise" states there is also a representative county board.

The two distinct types of county government are the New

NORTH CAROLINA

SAN BERNARDINO CALIFORNIA

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England and the Southern. In New England the county is simply a judicial and military subdivision : the court-houses, jails, registries of deeds, and in some cases the poor-houses are county buildings ; but the counties have very little control over roads, and almost none over the conduct of individuals. Upon the whole, the county gradually gains ground in New England as an administrative unit, although it is hard to keep it from extravagance.

In the South the county has been since colonial times almost the sole unit of local government. In Louisiana the so-called "parishes" are really counties. The principal officers are a board of county commissioners, and financial officers — also superintendents of roads and of education; there are various judicial officers, including a public prosecuting attorney, who in Virginia is popularly called "Commonwealth." In all county systems the most important and best paid office is that of sheriff. In large city-counties like Cincinnati, the sheriff enjoys fees which may amount to many thousands a year : the sheriff of Erie County (Buffalo), New York, rose to be governor of his state and president of the United States.

Practically all the functions of Southern local governments are vested in some of these county officers, — the schools, the poor, roads, bridges, assessment and collection of taxes, and local legislation for the health and morals of the people. The people seem to feel no need of smaller local governments, except where there are enough to make a village or a borough ; and even in those most of the local government is carried on by county officers. The former parishes in Virginia and elsewhere have ceased to be governmental units.

One advantage of the county system is that it tends to bring about one general kind of local government, for it is uncommon for a state to have different types of government in different counties ; and it is therefore easy to fix responsibility and to apply the control of the state to the performance of local duties. Throughout the South and West, there is an elab-

orate system by which counties are allowed to choose whether they will put into effect certain laws. Thus, counties may or may not tax themselves for railroads or other purposes, according as the legislature may direct; in Kentucky some counties pass on the sale of liquor within their limits, many of them prohibiting it even in the regions of "moonshine" whiskey.

The great advantage of the town over the county is that it has the machinery for an intelligent man-to-man discussion of public questions, and for their settlement by the immediate vote of an assembly. Nevertheless, in the Southern states there is always plenty of discussion of public issues wherever people congregate; and public opinion is reflected through the county commissioners.

84. Mixed County-Precinct and Township-County Systems.

Besides the town and the county government, there are two widely-diffused mixed systems, conveniently called by Professor Howard the "county-precinct" and "township-county." The first of these is but little removed from the county plan, the precincts being only electoral units or districts for the election of justices of the peace and constables. It generally precedes the township-county system, and is often a stage in the development of the latter. The so-called "townships" in California are of this type.

Although the second system has been developed chiefly in the Mississippi Valley, and is the result of sectional compromise, the substance of the organization existed in colonial Pennsylvania, and its early introduction in the Northwest Territory was largely due to the influence of that state. County government began in the Northwest Territory in 1788, and in 1790 provision was made for the civil life of the "congressional" townships, which in 1802 were given a more popular organization.

The system shows several types. In the simplest, such as

was adopted in the Northwest Territory, and now prevails in Pennsylvania, Ohio, Kansas, and elsewhere, there is no town-meeting, and the towns are not represented on the board of county commissioners; they have, however, usually some power of self-taxation, and a body of elected officers, including one or more supervisors, nearly coinciding with the New England selectmen, a clerk, treasurer, assessor, and constables. Wherever New England people have settled in large numbers, as in Michigan and Northern Illinois, town-meetings exist and go beyond the election of officers to the management of local affairs. The relation of these townships to the county are of two kinds. In Minnesota they have no representation in the county board of commissioners, the commissioners being elected at large, as in the first type and county system, though sometimes they are designated from particular districts; but in Michigan, Illinois, Wisconsin, and Nebraska — the Western states with the best local organization — the New York plan of a county board composed of the supervisors of the component townships is followed, a well-ordered executive legislature in which all parts of the county have membership.

In all three of these types the towns are marked off by the county officials, and the town governments are subordinate to the county organization. The degree of dependence varies in the different types and in the different states, being greatest in the first form; but in all of them the county is the judicial unit, and has general supervision over the administration of the townships; it levies taxes; the county school-superintendent is one of the most important local officers.

The county or county-precinct system, being simpler, more symmetrical, more easily managed, and therefore better adapted to thinly settled districts, was generally established first in the new settlements, especially wherever emigrants from the Southern states have been predominant; but a demand for town government was made by those who had emigrated from the states where it prevailed. In Michigan town organization pre-

ceded county organization, but in other states, where the settlers were not so homogeneous, the struggle has resulted in a compromise by which the counties are allowed to choose between the county system and the mixed system. In 1847 such a choice was first offered in Illinois, and now out of 102 counties about 90 have changed to the township-county system. The county option also exists in Missouri, Nebraska, and North Dakota. In Minnesota the option lies with the townships.

85. Improvement of Rural Government.

The foregoing sketch omits details which would show how varied are the possible combinations of rural government, — from Maine, in which the towns have nearly all the power, to Texas, in which there are practically no towns at all. On the whole, the town-meeting is losing its hold upon New England, except in exclusively agricultural towns; for it becomes clumsy as soon as the number of voters gets to be more than three or four hundred. The most remarkable New England towns are Brookline, with a population of 20,000 and a valuation of $91,000,000, which still retains its town-meeting undisturbed; and New Haven, which has an ancient town and town-meeting right in the middle of the city.

The most successful rural government is perhaps the township-county system of New York and various Northwestern states, because it emphasizes the small subdivisions in which people can know and meet each other, and also provides for a representative county assembly. The main objection is that there are two sets of officers to do one job, and that the large board of county commissioners is unwieldy. The county-precinct system is simpler, because most of the governing is done by a small board of county officers; but the commissioners are not so easily watched and checked.

The main improvement necessary in rural government is that the authorities of both towns and counties shall become more accustomed to appoint experts for special services. For in-

ALLEGHENY COUNTY PITTSBURG, PA.

MIDDLESEX COUNTY CAMBRIDGE, MASS.

COUNTY BUILDINGS

stance, road-making is an art for which a man ought to be specially prepared; and a road master or road commissioner ought to be a permanent officer, having the details of the service in his hands. Since roads are of consequence beyond the borders of the town, they ought everywhere to be a county affair. A corresponding reform will be the provision of a proper state agency for supervising the local governments and keeping them up to their duties to the states. The accentuation of town government is important because it makes people take an interest in their own public officers. On the other hand, the townships are units too small for some of their usual duties, particularly the management of schools: the good county systems have county superintendents, who visit the schools and keep them up to the mark; but there is only one state in the Union in which the towns are obliged to provide expert superintendents.

Upon the whole, rural government in the United States goes well: through the opportunity of choosing out of several established systems, people get what they think is best adapted to them. The county system breaks down wherever it is applied in counties having large cities; but the rural counties upon the whole have as good a government as the people desire. In some states, notably Massachusetts, county commissioners are habitually reëlected, and often serve for many years; in the Western states it is more common to change them frequently. In some states, the county officers have gone so far as to form an association to push their interests; and in some cases the frequently-reëlected commissioners have lost a sense of responsibility to the people who chose them.

CHAPTER XI.

CITY GOVERNMENTS.

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87. History of American City Governments.

Cities and their problems are as old as civilized mankind. Ever since the dawn of history men have gathered together in walled enclosures; indeed, our word "town" means a settlement surrounded by a palisade. At the beginning of our colonization there were many English cities founded on royal charter, most of which were represented in Parliament; and it was supposed that cities would speedily grow up in the colonies. Indeed, in the year 1641 a city charter, the first in English America, was issued to Agamenticus, Maine; and in Virginia two of the rural counties to this day bear the names Elizabeth City and Charles City; but even the largest places in New England all retained town government until after 1820. There were about twenty chartered boroughs and cities in colonial times, none of much importance except New York and Philadelphia.

The development of city government in America practically began about 1820. In the statistical publications of the United States government, a city is defined as an aggregation of 8,000 persons living in one territorial unit and under one local government. When the federal constitution went into effect in 1789, there were only six such cities. In the eleven decades since 1790 the total population has increased from 4,000,000 to 76,000,000, and the city population from 132,000 to 25,000,000. There are now more than 10,000 incorporated towns and cities, of which 546 have each more than 8,000

inhabitants. The present New York City had in 1790 less than 50,000 people; it has increased seventy times, to about 3,500,000. In 1810 there was not a single place of 100,000 inhabitants; now there are 38 such cities. The total city population in 1850 was under 3,000,000; in 1900 it was nearly 25,000,000; in 1790 about one thirty-third of the people lived in cities, now nearly one third.

We hardly realize how swift and how unique has been the increase of American cities. Nearly every European city of note was a large place four centuries ago; in the United States, of the fifteen largest cities, only seven had any population before the Revolution, and the ten great cities of Chicago, St. Louis, Cleveland, Buffalo, San Francisco, Cincinnati, Pittsburg, Detroit, Milwaukee, and Washington, taken together, had as late as 1840 only about 150,000 people. The cities are not only new on their ground, but they contain people most of whom come from outside the state, and many from outside the United States. At this moment, of the adults in the city of New York, 53 per cent are foreign-born.

The older places all suffered from the attempt to keep on with forms of government long outgrown. Boston continued a town, until in 1822 it was absolutely necessary to give it a city charter. New York found repeated legislative enactments necessary; its charter has been fundamentally revised no less than six times, and hundreds of single statutes have affected its government.

The ancient and mediæval idea of a city was that it ought to be a self-governed state; but that conception has nowhere been realized, or indeed attempted, in America. Perhaps Rhode Island, with its commanding city of Providence, is the nearest approach. Most of our cities are imbedded in states having large rural populations; and the legislatures have drawn up city charters, and are constantly tinkering with the city governments.

After cities began to spring up, it was many years before

Americans faced the new problem. During the half century from 1789 to 1840, their attention went to the states and their constitutions; then public interest went into the great struggle over slavery, culminating in the Civil War; and it was not until about 1875 that the Americans finally woke up to the inefficiency of their city governments. In the last twenty-five years most of the cities have received new charters, and there is at present a greater interest than ever before in improving city government. People have also become more aroused in municipal elections: the choice of mayor of New York City comes second in popular interest only to the election of president of the United States.

88. City Charters and City Functions.

The outward semblance of American city government is very similar to that of the state governments. It is founded on a written charter corresponding to the state constitution; the city mayor resembles the state governor; many cities have two legislative bodies, like the state legislature; and there is a system of executive boards very much like those created for state purposes. This resemblance is no accident: city government is purposely restricted and balanced and assimilated to state government.

In colonial times among the twenty or more borough or city charters, the most important were the Dongan New York charter (1686), and Penn's Philadelphia charters (1691, 1701). In Philadelphia, Annapolis, and Norfolk the city government filled its own vacancies, and thus got out of relation with public sentiment.

Soon after the Revolution, the state governments began to grant municipal charters, — Charleston in 1783, New Haven and other New England places in 1784, Philadelphia in 1789 (third charter), Baltimore in 1797. Probably, first and last, 1,000 city charters have been framed. Most of them have been drawn up especially for the city concerned, sometimes by the

preëxisting city government, more often by a committee of the legislature. Public-spirited citizens sometimes draw up a charter, and by agitation attempt to secure its passage: the Municipal League, a national organization of those interested in the improvement of city government, has recently drafted a model charter, which has been substantially adopted in some places.

City charters are frequently elaborate codes. For instance, a charter drawn up for the city of Minneapolis in 1898, by a special commission, contains 28 elaborate chapters and is 72 pages long. The city charter of Greater New York, 750 pages long, was drawn up by a commission appointed in June, 1896, which held public hearings and employed lawyers to help complete the draft; the commission reported in February, 1897, and soon after made public the text of the draft; there was little opportunity for public opinion to affect the draft, and with modifications it was enacted by the legislature as a general statute.

Another and better system that prevails in some of the Western states is to enact a general form of charter, applicable to a town or a village of a certain size which wants to become a city; it goes through the necessary formalities, and begins its municipal life under this general charter act. This method avoids the pulling and tugging of local interests to get special clauses into a city charter; and it also obviates the hurry and imperfection of charters hastily drawn and enacted, perhaps with contradictory provisions.

Charters are often, though not invariably, submitted to the people of a city for ratification. Besides a list of city officers and a careful enumeration of their duties, a charter or general organizing act invariably contains a statement of the local powers which may be exercised by the city. For instance, the Minneapolis draft of 1898 sets forth the subdivision into wards, the system of election and of appointment and removal of officers, the manner in which legislative ordinances may be passed,

and enumerates 88 specific functions which may be exercised by the city council, ranging all the way from "licensing newsboys, bootblacks, fortune-tellers, clairvoyants, astrologers, and massage doctors," to incurring debts for parks; and there are minute regulations as to making contracts and granting municipal franchises. The principal city functions are the police and fire service, water, public lighting, streets, schools, libraries (public and private), health, corrections and charities, parks, municipal franchises, and taxation and finance for carrying on these great purposes.

It is a fundamental principle of American law that no grant of power to a public corporation is irrevocable. Hence no legislature can give to any city authority which a subsequent legislature cannot wholly take away; otherwise we should have the mediæval spectacle of cities within a state and yet independent of it.

The purpose of a charter or amendatory act is to determine how a municipality shall govern itself. Legislatures go much farther, by ceaseless legislation directly affecting the relation of people to their city governments, and sometimes taking the government out of their hands. They do this in three ways: (1) By reducing or expanding the powers of cities, often for private or temporary ends. (2) By frequent and often causeless change of details. If a city, for instance, has a mayor with a term of three years, and a new charter is adopted with a term of two years, the mayor goes out of office a year before he expects. (3) By outrageous denial of any right of municipal home rule, — as, for instance, by the Pennsylvania "Ripper Bill" of 1901, under which the government of several cities, especially Pittsburg, was taken out of the hands of the people by endowing the governor with the right to appoint a "recorder" with the powers of the previous mayor, and the added power of dismissing other city officials. The result was the uprising of the people of Pittsburg, in the next municipal election, against what they thought was an unjustifiable deprivation of rights

and a denial of self-government enjoyed by almost all other municipalities in Pennsylvania and elsewhere.

89. City Government by State Legislation.

Of all forms of American fundamental law, city charters are most subject to alteration. Though superior to all city ordinances, and unalterable by either the government or the people of a city, they are, in the eyes of the legislature, simply ordinary statutes, changeable at will, and actually changed in many different ways. (1) By making a new charter outright: New York City has had four since 1783. (2) By general statutes providing new duties for all local governments, — as, for instance, the Massachusetts law that every community shall furnish opportunity for a high-school education. (3) By special acts applying to particular cities. Between 1880 and 1889 there were 390 such indirect amendments to the charter of New York City.

Under the best conditions, special legislation for cities complicates the law till no public officer knows just where he stands. In New York State, for instance, of 33 considerable cities, only four have the same charter or the same system of assessing taxes. The laws with regard to a particular city are confused, and the body of law affecting all cities is still more confused.

A plausible remedy for these confusions is embodied in the New York constitution of 1894, — namely, that a special act affecting a city may be vetoed by the mayor of the city so as to call public attention to the bill, though subject to be passed over the veto by a simple majority of the two houses of the legislature. In practice a Republican legislature almost always overrides a Democratic mayor, and *vice versa*. Another remedy is that the legislature shall pay closer attention to the recommendations of the city governments, which constantly ask the legislature to pass legislation in their behalf. Many statutes are passed without the consent, or even against the protest, of the cities affected. For example, the Ohio legislature in 1888

compelled the city of Cleveland to tax itself about $300,000 for the construction of an inartistic soldiers' monument.

The regulating power of the states is also indirectly exercised in various ways. (1) By designation of city officials. For many years the mayor of New York City was appointed by the governor; and in some states other city officials are still so appointed, although the practice is very unusual.

(2) By assigning duties to city officials, outside their local functions. Many municipal officials are really also state officials exercising powers under the legislature, because the city service is also a part of the state service. The city clerks, for instance, constantly have duties of registration and record thrust upon them by the legislatures; city tax-collectors also collect the state taxes, and must account for them; city school authorities are bound to observe state laws as to the course of study, the length of the school year, the text-books to be used, and the examination of teachers; the local police service is frequently used for the arrest of criminals against state laws.

(3) The right to impose duties implies the right of the state to see that they are performed. Not only do the state courts, by mandamus and other proceedings, control city officials, but in some states, especially in New York, city officials, even elective, may be removed by the governor if they refuse to perform their duties. The supervision of states over cities is as yet imperfectly worked out in the United States. A suggestion recently made is for a state municipal board, with the duty of watching over the municipalities and seeing that they comply with the laws.

(4) Another method of controlling municipalities is through the creation of state instrumentalities for purely municipal service. The most frequent function selected for this control is the police: in Boston the police commissioners are appointed by the governor and are responsible to him, although the city must tax itself for the support of the police. The ostensible purpose of such commissions is to get the police out of politics;

sometimes, however, the system simply substitutes a different kind of politics. In New York, after various fluctuations, the police have been restored to the control of a commissioner appointed by the mayor. Again, the control of elections is so distinctly a state service that it is not remarkable that many city election boards derive their authority direct from the state. Commonly the people of the cities dislike this state supervision, because they feel it a reflection upon their capacity for self-government, and it is an inconvenience to subdivide local government among various authorities. The tendency at present is to break up the state commissions, and to throw their functions upon city officials.

(5) Some functions of cities and of rural governments are as a whole supervised or administered for the whole state by state boards. For instance, gas commissioners may pass upon the quality and price of gas in every city; state boards of health have powers of control over all the local boards; about thirty of the cities and towns in the neighborhood of Boston have many common interests, and the state has created a "metropolitan" sewer commission, water board, and park commission. But side by side with the state system exist in most of the cities local sewer and park systems, with separate city boards.

90. City Councils.

Cities have no judicial system of their own; the so-called municipal courts and city courts are simply local branches of the state courts. The other two departments of government are nominally separated from each other; in practice, however, much of the city executive business is performed by committees of the council, a clumsy method which prevents rigid responsibility. The city legislative department is in most cities much weaker than the executive, for its field of authority is limited at best, and is constantly encroached on by the state legislature.

Colonial city governments had usually a single council, part of the members of which were called aldermen, and performed special functions; yet by an amendment in 1796 to the third Philadelphia charter two separate councils were provided; and the bicameral system speedily spread. In the Middle states this system is probably an imitation of federal and state government; in New England, when a town was changed into a city, a board of aldermen was provided, with the previous executive powers of the selectmen, and in course of time became also the more important legislative body. Since about 1870, perhaps two thirds of the considerable cities have got back to a single legislative chamber, which is now required in all the cities of Ohio.

The organization of local legislatures is very much like that of the state legislature: ordinarily each house, if there be two, elects its own president, who, like the speaker of the state legislature, appoints committees, and often practically controls all the proceedings. The lower house is considered a training-school for the upper chamber, which is commonly the least numerous body, is rated higher, and has larger functions: for instance, it often votes on nominations made by the mayor. The term of office is commonly one or two years, occasionally more; and more than one or two reëlections are not usual. In small places the city council may have not more than 12 members; in Boston there are 75 councilmen and 13 aldermen. Small salaries are common; and in New York the members of the board of aldermen have salaries of $1,000 per year. There are many petty privileges, such as theatre tickets, carriage hire, visits to other cities, etc.

In almost every city the mayor, through the veto power, is a part of the legislature, and often presides over one or the other branch of the city government. As in the states, the veto may usually be overridden by a vote of from two thirds to four fifths: of 920 measures sent to Mayor Hewitt of New York in 1887, he vetoed 825, of which only 48 were passed over his veto. In general the city legislatures frame a large

amount of legislation on small matters. The body of ordinances is constantly swelling, and is from time to time codified into a statute-book: the revised ordinances for the city of Hartford for 1898 contains 21 chapters and occupies 141 pages. Besides the ordinances, the city governments frequently pass resolutions on general political matters; they often appoint committees to investigate executive officers; and they are fond of sending committees about to other cities to examine the public service there, at the expense of the home taxpayer.

The people of the cities are commonly not much interested in the action of their city councils. In a few cases the proceedings of the city are reported verbatim and printed, but they do not appear in the newspapers of large circulation.

In most cities there is little left for the city legislatures to do: in New York City, for instance, the aldermen have almost no large power except to grant franchises. Bribery is not unknown in city councils, and sometimes money is directly applied on a large scale. In 1902, in St. Louis, $160,000 was deposited in a bank, subject to the joint control of the friends of a franchise, and of certain members of the city government who undertook to get it through. The ordinance passed the council, but was vetoed by the mayor; whereupon the engineers of the scheme demanded that the money be surrendered to them. The original possessors resisted, and the matter finally got into the courts.

Many men of high character serve on city councils. For instance, in Pittsburg, and in Chicago of late, a large majority of the council have been men of high public spirit; but the labor is made unduly heavy by the executive committee work, and the opportunity for reputation is small. At present the city councils, from having been the centre and source of city government, have become the least important branch, and perhaps the least esteemed. Various reasons are given for this unhappy state of things; perhaps the most forcible is the feeling of the people of a city that they must appeal for good

government, not to their city representatives, but to the state legislature.

From the beginning, the city councils exercised large executive functions, at first through the upper house, commonly called aldermen, and then by standing committees on executive matters; and to this day most of the city governments, both in their ordinary legislation and in school matters, keep up the system of executive committees, which have power to settle on executive policies and to give directions to executive officials. For instance, in many cities there is a finance committee, without whose consent practically no appropriation can be made; committees on parks, public buildings, schoolhouses, text-books, frequently control park commissions or school superintendents and principals. This confusion of executive and legislative functions, although common in state legislatures, is unfortunate; for the city councils change rapidly, and hence members of committees have often little experience in their fields. It is hard to fix responsibility on a committee of several members; and some one member of the committee, often the clerk or the secretary, really settles many matters of importance, although he is in no official relation to the executive department. A very common method is for the members of a committee to parcel out appointments and duties geographically: a committee on teachers, for instance, agrees that each member shall have the patronage in a certain ward or district.

While city councils have been grasping executive power, they have suffered from several encroachments upon their nominal legislative power. The most important are those of the school board and the board of estimate. In nearly all cities the school board is a separate local legislature, appointed by the mayor in a few cases, but almost invariably elected either by wards, or on the general ticket; it is usually too numerous for very efficient action, and is possessed of almost complete power over teachers, courses of study, and discipline. In some cities the school board also builds the schoolhouses

and levies a separate tax; but a more common system is that appropriations shall pass through the hands of the regular city government, which provides new buildings.

In many cities, the councils have no longer control over taxes and no power to initiate expenditures; in some cases they may amend a budget; in others they can only reduce the estimates, they cannot increase them. Many of the large cities, including New York, Buffalo, New Haven, Minneapolis, Cleveland (till 1902), Toledo, and Albany, have a board of estimates, made up of executive, usually elective, officials, especially the mayor and comptroller. This non-legislative body actually exercises the most important of all legislative functions, — namely, the laying and expenditure of taxes. The present Greater New York charter has an ingenious system in which some of the executive officers have one vote on the board of apportionment, some have two, and some have three, according to their importance. Upon the whole, these special financial legislatures seem to work well, and they are likely to remain, although they manifest distrust of the ordinary elective council.

91. The Mayor.

As in the states, the municipal executive is divided into three parts: a single official, commonly called the mayor; other executive chiefs, usually not appointed by the mayor; and a force of executive subordinates. In the colonial charters no mayor was elected by popular vote: he was designated either by the governor or by self-perpetuating councils; and the mayor of New York City was appointed by state authority until 1821, when provision was made for the choice of mayor by popular vote, which is now practically the invariable system.

Three quarters of a century ago people dreaded the establishment of a one-man power, and hence the mayor was long inferior to the councils. (1) Until within twenty years the

mayor has almost never had the power of appointing the principal executive officers of the city. (2) His power to appoint lesser officers has almost always been subject to confirmation by aldermen or a council. (3) Large areas of executive power have been by the charter withheld from the mayor and retained by committees of the council, or given to separate executive boards. (4) In many cities, the early mayor had no veto power on ordinances passed by the council. Without a thorough appointing power, without a removal power, without adequate administrative powers, the mayor was sometimes a figurehead, more often an official having responsibility for acts which he could not control.

About 1850 began the more systematic organization of city government, and in various charters the mayor received greater powers, including the qualified right to remove. By some of the most recent charters, — as, for instance, that of Boston, — the mayor may remove appointive officers without the consent of the council, and is thus enabled to compel obedience to his directions on pain of dismissal. In a few states, notably New York, the mayor may be removed by the governor. The tendency of new charters is now to strengthen the power of the mayor, by giving him the appointment of more officials (in some cities, not subject to ratification), and by giving him a larger removal power. Such charters were obtained in Richmond in 1870, in New York in 1870 and 1873, in Pennsylvania in 1873, by a general municipal statute for the organization of all cities of a certain class within the commonwealth. Another improvement has been to extend the mayor's term, which is now two years in Boston, four years in Buffalo, and three years in Cincinnati.

By this gradual process the mayor has been brought near to the governor in relative power; but, like the governor, he still needs authority to appoint all the heads of departments, after the example of the national government. In the model programme of the National Municipal League of 1899, it is proposed that the mayor shall have the sole power of

appointing and removing all executive officers except the comptroller. In the former Brooklyn charter, this system was extended to broad limits. In 1891 the Cleveland public executive service was divided into six departments, at the head of each of which was a "director" appointed by the mayor with the approval of the council, and removable by the mayor; subordinate appointments were made by the heads of departments. This so-called "federal" plan has also been followed substantially in the charter of Greater New York; of course it so concentrates power in the hands of the mayor as to call public attention to his acts, and he is justly held responsible for the acts of all his subordinates.

This system of "responsible mayoralty," especially if it includes removal for cause which seems good to him, undoubtedly tends to increase interest in the election of the mayor who exercises such large powers. It also greatly increases the efficiency of the executive, because the mayor can keep the various departments in line on carrying out a policy. Furthermore, it tends to check excesses on the part of the council, since the mayor who has the will has also the power, not only to veto measures, but by his conspicuous position to direct public attention against what he believes to be unwise. The power for harm of a responsible mayor, if public sentiment is apathetic, was strikingly shown in 1902 in the performances of the city government of Minneapolis, where the mayor sold permits to evade the law, and had to be driven out by prosecution in the courts.

As head of the city, the mayor has important social functions: he welcomes distinguished visitors, represents the dignity of the city, and often takes part in great public occasions outside of his official duties.

92. City Departments.

The city executive service is necessarily subdivided into many departments, most of the heads of which are elected, and often for different terms and at different times from the

mayor. In the earlier years of American municipal experience, such officials were commonly chosen by the city council, as some are still. It was thought a promising reform when, about 1850, the large cities began to elect their own municipal officers.

The subdivision is not unlike that in the states. There is always one financial officer, and often several: thus, in the old Brooklyn charter there were separate departments of finance, audit, assessment, collection, arrears, and treasury. The city treasurer is often one of the most important of these officers, and in small cities combines most of the executive financial functions. Commonly there is another officer, the auditor or comptroller, who is practically the city bookkeeper; and, as he decides what payments are legal, his position is one of great importance. There is usually a city solicitor, or corporation counsel, who acts as a kind of attorney-general for the city. One of the most important departments is the police, usually headed by a commissioner, sometimes by a board of commissioners. Next in significance is the fire department, with a commission or a commissioner. The department of education is commonly quite separated from the rest of the city officers. Public works is an important executive department, sometimes subdivided into a building and a street department, with a street commissioner. The department of health is usually under the charge of a board. Street-cleaning is sometimes a separate department from either the board of health or the street department. In cities which have their own water or lighting systems, a water or a gas commission is common. In cities like New York, Philadelphia, and Baltimore, the county officers, sheriff, prosecuting attorney, treasurer, and so on, are in effect a part of the city system: the famous Tweed Ring of New York, in 1872, was made up of county officials.

Except where there is a cabinet system of officers mostly appointed by the mayor, there can be little direct relation between departments. Sometimes the mayor calls the heads together at a daily or a weekly meeting, so that each may

know what the other is doing; but, unless removable by the mayor, the heads of departments are very likely to work against him.

In general the salaries of city executive officials are unreasonably small, much lower than those of the servants of great corporations who perform similar functions. The mayor of Greater New York receives $15,000 a year; the mayor of Boston, $10,000; the mayor of Chicago, $10,000. The chamberlain of New York (the city treasurer) under the old system had $25,000 a year. In smaller cities such officers as the street commissioner, city treasurer, and city engineer receive from $300 to $3,000 a year, in almost all cases by an outright salary, for fees are uncommon. Some cities of the middle class pay more adequate salaries: the city treasurer of Indianapolis receives $8,500, while the treasurer of Springfield, Illinois, receives but $1,200.

93. City Officials and Employees.

Below the heads of departments comes a little army of subordinate officers of every kind, down to the gang bosses for laborers. Where politics are highly developed, many such offices are created to furnish support to the district leaders. Most of the subordinates are appointed by the heads of their offices, and hence are subject to removal whenever there is a change, by election or by political revolution, among their chiefs; therefore in later and better charters the minor officers are often appointed by the mayor. These positions are very eagerly sought, especially when protected by the civil service system.

In some departments, the number of people holding responsible positions is considerable. In all the financial offices, — treasurer's, tax-collector's, auditor's, comptroller's, and the like, — there must be competent heads of bureaus, capable of directing a body of clerks; in the offices of public works, there must be trained engineers and surveyors. Throughout, there must be some clerks who know the routine, or else the

1. CAMBRIDGE, MASS.

2. PHILADELPHIA

NEW ORLEANS

LOUISIANA

CITY BUILDINGS

machinery of business would stop altogether; hence there will always be found a small number of officials retained from year to year. In Cambridge, Massachusetts, the present city treasurer, chosen by the city council, has been reëlected twenty-four times.

Below the responsible men who exercise discretion, every large city has two large bodies of subordinates who take orders but do not give them. First in order are the policemen, the only city servants, except the fire department, with something like a military organization. Since the lives and property of the people depend upon the faithfulness of the police, in most cities they have something approaching a permanent tenure: in New York, for instance, they can be removed only for cause. The firemen, also, employed in a skilled and hazardous calling, are well paid, and in most cities have long tenure. For this very reason there is a tendency for policemen and firemen to organize and insist on a raising of their pay. The ordinary pay of the New York police force is $1,400 a year, with a retiring allowance.

Next come the laborers on street, sewer, and water construction, and on the great public buildings. In most cities they have a precarious employment, since getting city employment depends not on capacity but on a recommendation by a politician. Even in the few cities where civil service rules prevail, it is hard to provide a proper test for laborers. City work usually costs more than private contract, because it takes more men to accomplish the same job, and they usually receive high wages. The labor organizations in general favor some method of selection of public servants which shall not depend upon the good will of politicians; and experience shows that it is possible to select unskilled workmen, not by any formal examination, yet without the favoritism and lack of responsibility which go with political appointment.

94. Civil Service Reform in Cities.

In view of the large number of minor employees, the application of the principles of civil service reform to cities is one of the most promising improvements now proposed. So far, only a small number of cities have been brought within the system. By the constitution of 1894 of New York, civil service reform must be applied to all the cities within the state; by a statute of Massachusetts (1885) it may be applied to any city which so votes, and most of the Massachusetts cities have accepted the act. It has also been applied, since 1895, to such cities of Illinois as by popular vote might desire it; the city of Chicago by a large popular majority at once accepted it.

The general principles of the reform are as follows: (1) Candidates must pass examinations, "public, competitive, and free to all citizens of the United States"; only through such examinations can people enter the city service. (2) Appointments are made provisionally: the head of an office may refuse to appoint at the end of a short period of probation, if he is not satisfied. (3) Promotions are to be made from one grade to another, on the basis of ascertained merit, seniority in service, and examination. (4) No person may solicit political contributions from any city officer or in any city office.

These acts are sometimes disregarded outright by the appointment or promotion of persons who have not been examined; but there are civil service commissions, whose business and whose interest it is to uphold the law. The law is sometimes lamed, however, by legislative or executive exceptions, sometimes hundreds in number; and rebellious heads of offices apply to the courts to delay the effect of the law, and attack it in its details. Perhaps the most effective opposition to the law is a constant current of contemptuous criticism in the press, and often in public speeches. The favorite charge is that the examinations are not practical, — a charge easily

disposed of by reading the published papers set for the different kinds of service.

The mainstay of the merit system is that in practice a better grade of man is obtained for clerkships and similar tasks than by political appointment. Among skilled labourers, the likelihood is greater that the men appointed will actually be good workmen; and the city officials, who are relieved from the pressure of appointing political friends to office, have more time to devote to their regular duties.

This whole system of civil service reform is necessarily limited by the power to remove for the good of the service. Wherever a responsible mayoralty has been established, he must have the power to remove heads of departments, for otherwise there could be no administrative unity. It is likewise necessary that the heads of departments shall have power to remove their subordinates, not only for peculation or positive disobedience, but also for inefficiency. If, however, to fill the vacancy they must accept the candidate shown by the civil service examination to have the best rating, there is no longer the temptation to remove simply because somebody else wants the office; and hence the merit system of appointments to a large degree prevents removals, and thereby encourages men in office to do their best.

CHAPTER XII.

PROBLEMS OF CITY GOVERNMENT.

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96. Urban Residents.

What are the real difficulties of American cities, and how shall they be remedied? We may learn much from our own experience, and also from the solutions found in other countries, especially in England and the English colonies, which have cheaper and more effective municipal governments than ours.

The first difficulty in America is the immense city population, and the massing of the great cities of America on the Atlantic coast, the Great Lakes, and the Ohio and Mississippi rivers, with potentialities on the Gulf and Pacific coasts. Counting a city as an aggregate population of 8,000 or more, the 6 "cities" of 1790 had 132,000 people, or about one thirty-third of the population; the 546 cities in 1900 had 25,000,000 population, about one third of the whole population; and in New Jersey three fourths of all the people live in cities. The largest city in the United States in 1790 was Philadelphia, with 28,500 people, and the largest city in 1900 was Greater New York, with 3,437,000. In New England and the Middle states alone, about 14,000,000 people live in cities, and over 9,000,000 more in the interior states, from the Ohio to the Dakotas and Kansas; while in all the Southern and Southwestern states there are not 4,000,000. In twenty years Chicago has increased from 500,000 to 1,700,000.

By the census of 1900, the twenty-five largest American cities in their order were: —

New York	3,437,202	Milwaukee	285,315
Chicago	1,698,575	Washington	278,718
Philadelphia	1,293,697	Newark	246,070
St. Louis	575,238	Jersey City	206,433
Boston	560,892	Louisville	204,731
Baltimore	508,957	Minneapolis	202,718
Cleveland	381,768	Providence	175,597
Buffalo	352,387	Indianapolis	169,164
San Francisco	342,782	Kansas City	163,752
Cincinnati	325,902	St. Paul	163,065
Pittsburg	321,616	Rochester	162,608
New Orleans	287,104	Denver	133,859
Detroit	285,704		

The rapid growth of great cities, especially of Philadelphia, Boston, and New York, has in part come about through the incorporation of former separate municipalities: Thus Manhattan borough in New York, in the ten years from 1890 to 1900, increased only about 400,000; but during that period there was added nearly 2,000,000 of population from Brooklyn and the smaller boroughs of Richmond and Queens. This process is now about ended: Boston is the only large city which has adjacent to it a considerable urban region; and at present its neighbors show no tendency to political union. The great centres of population in the United States are now well established, and most of them grew out of their relation to transportation: Boston, Providence, New York, Philadelphia, Baltimore, Charleston, New Orleans, Galveston, San Francisco, are great shipping ports for distribution inland; Chicago, Duluth and Superior, St. Paul and Minneapolis, St. Louis, Cleveland, Buffalo, Pittsburg, Detroit, Milwaukee, Cincinnati, are on watercourses at convenient points for shipment. A few other cities, such as Columbus, Indianapolis, and Kansas City, have been created chiefly by the concentration of railroads; but it is altogether likely that all the great American cities of the future are already founded.

97. Distribution of Population within Cities.

Within the cities the population is very unequally distributed: for instance, in the areas of Chicago, New York, and Boston are large tracts of farming country still actually tilled, and also some of the densest centres of population in the world. The main problem in the distribution of people within a city is the relation of the business area to the residence area. Most cities have regions (usually on a water front) so far given up to the business of mercantile transportation and manufacturing that at night they are almost deserted; other parts of the city are almost free from business and constitute the homes, usually in two settlements, — a so-called "residence" section inhabited by the well-to-do, and a poor quarter often degenerating into slums.

Until about ten years ago the residence quarter stood near the business section, so that business or professional men could live not too far from their daily duties. The introduction of the electric car has caused a great difference, because it is now as easy and almost as quick to travel two miles as half a mile; hence the residence section tends to move far out, where the circle is bigger, and the values of intermediate property have been much diminished. The shifting of the residence quarter leaves many vacant lots, so that the American city is much less neatly and compactly built than the foreign city. On the other hand, except in New York, Philadelphia, and the heart of Boston and Baltimore, well-to-do people prefer detached houses instead of blocks of buildings. During the last twenty-five years the European system of flats has become frequent in cities, large and small; it has the advantage of ease and simplicity of housekeeping, but deprives the occupants of separate pieces of ground which they may use as they like.

The poor section of an American city is always squalid: the so-called "tenement-houses," in which families occupy suites of a few rooms, or even single rooms, always tend to depreciate; and both rigorous statutes and honest administra-

tion are necessary to prevent unhealthy and immoral crowding. In some foreign cities, municipalities construct proper buildings for the poor; Naples has spent about $20,000,000 for this purpose, and in London large sums are going into new lodgings. The farthest point reached in America is legislation for pulling down the worst buildings, and leaving sites vacant for breathing-spaces. One reason for the crowding in cities is the presence of large numbers of foreigners, accustomed at home to live in close quarters. In many cities there are special foreign quarters, — an Italian section, a Russian-Jewish region, a Bohemian quarter, a Hungarian settlement. In such streets one might imagine one's self in the heart of a foreign city.

The numbers and the races of foreigners differ much from city to city. Many Irish are settled in the large cities, especially on the coast; the Germans have been distributed through ports having direct steamer lines to Germany, particularly New York, Philadelphia, and Baltimore, and also through most of the great interior cities; the Scandinavians have preferred the Northwestern country and the cities within it; the Russian Jews have settled by preference in large Eastern cities; the Italians have taken up small lines of business, principally in New York and Boston; the French are very few outside the large Atlantic coast cities; the Greeks have absorbed the fruit business in most cities.

It is a great mistake to suppose that as a rule foreign-born citizens are less interested in good city government than natives. Some of the worst-governed cities have the smallest foreign elements; and in the great communities of Chicago and New York, where nearly three adult men out of five are foreign, there is a keen interest in local government, and conditions are improving. The great trouble that arises from foreigners is the ease of rolling up a German or Irish or Scandinavian vote, and the difficulty of adapting people to new conditions of life. No wonder it takes time to arrive at a sense of personal responsibility for good city government

among people who are living in what is to them a foreign country, who have torn themselves up by the roots from the land of their fathers, and who do not see all native Americans on the side of public righteousness.

Americans-born are also a changeful folk. Many country homesteads have been occupied by members of the same family for a century or two, but not one man or woman in a hundred in the city lives in the house in which he was born. Neighborhoods change; one set of people moves out, another set moves in; and it is hard to plant the feeling of fondness for one's city, of pride in its beauty and in its good government.

Some foreign cities, particularly in England, have hundreds of absolutely houseless people, who may be seen at night sleeping on park benches and under dry arches of bridges; in American cities such persons are few, for, though tramps moving from place to place have often no lodging-place, in most cities the destitute are received in rude lodgings at police station-houses. In England no person can vote who has not a fixed residence of some kind; in the United States tramps and outcasts, who really have no continued relation to a city, are sometimes allowed to register from some place where they occasionally spend the night, and to vote.

98. Problems of Transportation.

The irregular distribution of the population of our cities makes of great importance the system of transporting urban and suburban passengers. The most obvious method was by vehicles running through the ordinary streets. Such omnibuses or stage lines have nearly ceased to exist, though there is still a line on Fifth Avenue in New York City. Next came the horse-cars, first successfully introduced in 1845, when people were so glad to have a convenient method of transportation that they gave to the companies who built the lines almost any privileges asked. As population increased, such privileges became valuable, sometimes enormously valuable.

Then in a few communities arose the system of elevated railroads, which could handle passengers much more quickly because they did not run into or across streets at grade. Such systems exist in Berlin, Paris, and London; but New York, Chicago, and Boston are the only American cities in which they have been constructed. The next step was the introduction of the electric cars, about 1890. The advantages of this system are that it does not require stabling of horses, and hence can be operated with much less real estate; that the power is easily distributed and can be quickly increased or diminished; and that larger and more commodious cars can easily be run at higher speed than is possible with horse traction. The trolley lines have driven the horse-cars almost entirely off the city streets. Most of the trolley lines have an overhead wire; in New York City, however, the roads have been compelled to put their electric supply in an underground conduit.

The original horse-railroads were separate short lines, but they have been gradually gathered together in larger companies serving particular districts. Under the trolley system there has been still greater consolidation, till in cities like Detroit, Richmond, and Boston the whole service is performed by a single company. The number of passengers is prodigious: in New York the various lines, surface and overhead, handle 865,000,000 passengers a year; in Boston the Elevated Railroad Company, which also owns the surface lines, handles 214,000,000.

The newest, and in many ways the most convenient, traction system is that of underground railroads. London has had one since about 1860; Budapest and Paris have them; but the first American city to try the system was Boston, which in 1895–1898 built a subway about a mile long, and is now constructing sub-marine tunnels, and is about to build a second subway. New York is now constructing a splendid system of subways aggregating twenty-one miles, to cost $35,000,000; and other cities are likely to take up the same plan, which is

not affected by weather, is entirely out of the way, and does not disfigure the streets.

The handling of city passengers causes various complications with the city governments. In the first place, many street railroad companies have received perpetual concessions, — that is, rights to lay permanent rails for private gain in streets which are the property of the city. Such concessions are now counted so valuable that in the state of New York the constitution forbids any grant lasting more than twenty-five years. Where concessions run out and have to be renewed, the great companies are compelled to pay for the paving of a part or the whole of a street, or to pay a fixed license fee per car, or to pay a certain part of the gross receipts for the year. Even where companies have perpetual concessions, it has in several states been found possible to tax the value of their franchises, — that is, to compel them to make some return for their enormous privileges.

The physical task of taking care of the throngs of people is a serious question. In most cities there is a system of free transfers, usually at the centre of the city, so that, starting from one suburb, one may often travel for a single fare, five, ten, or fifteen miles to another suburb at the extremity of the city; and the city governments are always pressing the railroad companies to increase transfers. The almost universal fare throughout the United States is five cents for each passenger, no matter what the distance travelled. On foreign lines it is very common to have a system of coupons, by which a man pays in proportion to the distance, the lowest fare being about one cent. On most European lines no passengers will be received unless there are places for them; in the United States, during rush hours, cars commonly have as many people standing as sitting.

99. Political and Party Organization in Cities.

The suffrage in American cities is obtainable by all adult men not intellectually or morally incompetent; only in Providence there is a special property qualification for municipal voting, and in some other cities the same poll-tax qualification as in other parts of the state. It is often urged that the cities would be better governed if only actual owners of real estate, or of personal property of some consequence, should be allowed to vote. The experience under the old system, however, was that property-owners have no more to gain from good government than the moneyless, and are no more likely to keep up a good and economical government. On the other hand, a deprivation of the suffrage would create a discontented class.

It might naturally be thought that, in organizing parties in cities, people would group themselves on local questions which are of great moment, such as the management of schools, franchises to traction corporations, increase of taxes or of debt; but, as has been shown in discussing state politics, the actual division of parties is almost invariably on national issues. The inevitable purpose of city political parties is not to furnish a good local government, but to keep up political organizations and to get out the vote for national and state elections. So far has this gone, that in various states the main political parties are recognized by law as entitled to membership on municipal boards of police or elections.

This division of the voters of a city on questions which do not immediately affect municipal affairs is one of the most serious defects of American city government. (1) It prevents people from expressing an opinion on vital issues: if they want new waterworks, it is not Democratic or Republican waterworks, but waterworks which will squirt; and the introduction of party issues often prevents getting at local questions of large importance. (2) A good city official cannot expect reëlection unless his party remains in power; and even his renomination depends, not upon the faithful performance of his duties, but

upon his party loyalty. (3) The system tends directly to boss rule; for the successful municipal chieftain is he who can get out the most votes in a state or a national election. He therefore is allowed to make up a municipal ticket which will help him hold the vote, and to that end he may control the distribution of city offices. It means also that faithful party men are likely to accept the stamp of the local convention or boss in municipal elections, and to vote for the regular party ticket even though it has bad men upon it.

A most serious difficulty in securing non-partisan government is that the city officials are called upon to execute state laws which are really political, — such as the management of caucuses and elections, and the enforcement of liquor laws and other measures which apply to the whole state. If there were a proper system of state supervision and enforcement of laws, it would not seem so important to elect city officials who are in sympathy with the politics of those who pass the laws.

The evils of political parties in the cities are perhaps somewhat exaggerated in the public mind. In order to carry party elections, the managers are often compelled to put up men of character for municipal office; and, if there be a local issue in which the people are deeply interested, they will find a way of expressing opinion by indirect pressure upon the city government, or by the wholesome process of withholding their votes and preventing a party majority. In many cities, private organizations have proved a most effective and influential means of directing public attention to the real municipal issues. Watch and ward societies, good government clubs, societies for the prevention of vice, and the like, keep watch over the administration of the city, and secure evidence for the conviction of evil-doers in or out of office. Such organizations concentrate public attention on municipal problems, and against individual officials who have failed in their trust.

Another form of relief from over-partisanship is the establishment of local third parties called by various names, — "non-partisans," "reform party," "citizens' union," and so on, —

and frequently engineered by large committees of eminent citizens called "committees of seventy," "committees of one hundred," and the like. The ever-present difficulty with such organizations is that they have to fight all the regular parties at once, and that it is hard to keep them together if they lose elections. In a city where a large majority of the voters are Republicans, the Republican organization will be kept going from year to year so as to hold the state vote. In a city where a majority of the voters are willing to elect a non-partisan candidate, a citizens' movement may die out because there are not enough people ready to do the hard work of organization and getting out the vote. Nevertheless, the tendency in great cities at present is distinctly toward ignoring party lines on questions of municipal administration, while adhering to them on state and national issues.

100. Essential Defects of City Government.

All writers and observers see great defects in American city government. Many of them arise from human nature, or from the conditions of city existence, and cannot be removed; a larger group are not inherent in circumstance, and by intelligence and public spirit ought to be overcome.

Among the inherent defects is the rapid change in the make up of the cities. Where population is increasing with leaps and bounds, no city government makes sufficient provision for the future. For instance, had the people of the great cities fifty years ago foreseen the present use of pipes, they would have prevented the intolerable digging up of the streets by providing subways into which new pipes could be introduced as needed. Hardly a city in the country makes provision in advance for the growth of the school population, and hence the pitiful spectacle of thousands of children in some cities turned away on the day of the opening of school, because there is not room for them.

The shifting of population to and fro, the rise and sometimes the decay of suburbs, necessarily cause wastefulness in

the expenditure of public money. The movement of people from country to town, from town to city, from city to large city, from large city to another large city, prevents the formation of a civic pride, which must be the basis of good government. The large amount of city business, the great problem of transporting literally hundreds of thousands of people to and from their avocations, the question of proper terminal facilities for steam-railroads, — these are difficulties which cannot be obviated. Furthermore, the division of powers between the nation, state, and cities, while salutary, tends to sacrifice the interests of the city to those of the state.

(1) Of the non-inherent difficulties, first in importance is the confusion of the fundamental laws for the cities. Many city charters are not well balanced or adjusted, because drafted by men who have had small experience in city government. Of late there is some improvement; for, when a city needs a charter, its existing government often insists on being heard, and demands that its experience be used in forming the new government. But the constant tinkering of the charters tends to destroy their unity; and, while the charter as a whole is often submitted to popular vote, small amendatory acts almost never have that guaranty.

(2) The next difficulty is the constant interference of the states in city government, not only by the altering of the charters, but by new legislation throwing additional duties upon all the cities, and by special acts expressly intended to aid or depress the political leaders of the city government for the time being. Well-intentioned legislation produces confusion, and ill-intentioned legislation sometimes paralyzes a good administration. What is needed here is a more intelligent division of powers, committing to the city more of the city functions; and then the legislature ought to keep its hands off.

(3) Another difficulty is adherence to bad methods of government. In most cities, both the mayor and the council have too little power; they are both too much tied up by legislative acts, and hence both work at a disadvantage; there are too

many officers, elective and appointive, and their terms are too brief. A study of English, French, and German methods will furnish many useful lessons as to the proper organization of local government.

(4) Another trouble very hard to prevent is occasional corruption in the city government. This may also occur in state or national affairs, but is perhaps more common in cities because it is harder to fix responsibility, and because there is so much detail in city business that it is hard to watch it. City governments are expensive: both the annual expenditure and the public debt are constantly on the increase, and they do not always furnish a good article of government for the money.

101. Possible Improvements in City Government.

If the experience of eighty years of large cities has not yet taught the Americans how to carry on their governments, it is not likely that they will be made perfect in the next eighty years; but two powerful agencies are always at work for reform. The first is time: it is impossible that the great cities can continue indefinitely to increase in population at the present rate, and hence many of the evils which result from temporary and unexpected changes will disappear as time goes on. The cities will at last find themselves. The second agency is better organization, which would remove many of the internal difficulties of cities. The system of responsible mayoralty has much to commend it, and is apparently gaining. It tends to improve the whole administration of cities: for if the mayor means well, he has the power to compel his subordinates to support him; and if he means ill, public attention is centred upon him, and he is justly held personally responsible for the acts of his subordinates.

On the other hand, it is unfortunate and demoralizing that so little power should be left to the city legislatures. If the state legislatures would put into their hands many of the subjects now carried on under state law, the people of the city would feel stronger responsibility. This is what is meant by

the term "municipal home rule," — namely, the desirability of having a community like a great city make its own ordinances on matters which do not directly concern the people of other cities or of rural districts. Executive officers ought to be left freer in their executive duties; the city legislature ought to be less hampered in its work of legislation. Another improvement would be greater publicity with regard to the working of city governments: reports ought to be more numerous, briefer, and clearer.

The ill effect of party system can in part be obviated by the very common method of holding municipal elections on a different day from the state or national elections. This prevents combinations and deals, and leaves people freer to vote according to their ideas of what is good for the city. People vote for the things that they think most important; and if in the long run they prefer party candidates, irrespective of municipal issues, no one can protect them from the ill results.

Civil service reform in cities is a powerful corrective on the party system, because, if rigorously applied, it takes away from party managers the power of using patronage. If the minor executive offices are filled by some other method than personal influence, the holders of those offices are not compelled to turn out and work for their party on penalty of dismissal, and they and their friends are more likely to act according to their conception of the welfare of the city.

In the long run, however, the only effective remedy for bad government in the city, and the only guaranty for good government, is a sentiment of civic pride: there can be no hope of good government if people do not care that their city is dirty, unhealthy, has bad water, and is plundered by private corporations; if the well-to-do people in a city do not care that their poorer neighbors suffer. Good city government will take care of itself when people cease to be proud of their city because it is big, and begin to be proud because it is beautiful, clean, healthful, has the best schools, the best police, the best fire department, the most public-spirited officials, — when the

people who have most of the other advantages of life insist on the best government for themselves, their children, their neighbors, their fellow-citizens, their country; for in the long run the well-to-do in city or in state get honest and effective government, if it is a thing that they really want.

Part V.

National Government in Action.

CHAPTER XIII.

INTERNAL ORGANIZATION OF CONGRESS.

102. References.

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103. History of the Two National Houses.

To describe state and local governments comprehensively is impossible, because there are so many types and varieties. The national government, however, is not only more completely organized than that of any state or city, but is also a unified system, well distributed in three departments. Of these the most powerful is the legislative body.

The origin of Congress is to be traced back to the Second Continental Congress, which in 1775 had to act as legislative, executive, and source of judiciary power, till a Confederation could be organized. No other method but an equal representation of the colonies was then practicable; and under the Articles of Confederation, in 1781, another Congress was organized in a single house, each state having one vote. Seven years' experience showed that such a body was unequal to its manifold responsibilities, and the large communities were restive at the equal vote of the small states. The Federal Convention, therefore, in its earliest sessions adopted the principle of a national legislature of two houses, and with some difficulty, by the so-called "Connecticut Plan," hit upon a method of representation which protected the small states by giving them equality in one house, and the large states by

giving them representation in proportion to numbers in the other house. Thus, as a way out of a practical difficulty, the nation returned to the English and colonial bicameral system.

Since the organization of the government in 1789, all legislation has come from two houses acting in concert; but three additional functions of government are performed by the Senate alone: (1) it has power to confirm or reject nominations of executive officials by the president; (2) it shares treaty-making power with the president; (3) it sits as a court of impeachment. In all matters of legislation the two houses have equal authority, for the special constitutional prerogative of the House of Representatives to initiate revenue bills has proved of little significance.

In the history of the United States, the Senate, as the smaller house, with a longer term and with its special functions, has usually been the more dignified, the stronger, and the more determined body. During the first twenty-five years of the republic, foreign relations were of prime importance, and the Senate's power over treaties was constantly invoked. It was not till 1811 that Henry Clay arose, the first speaker who understood how to make the House of Representatives powerful: under his skilful management the House, from 1815 to 1825, was the body which probably did most to initiate legislation and to attract public attention. Daniel Webster, John C. Calhoun, Langdon Cheves, James Buchanan, and many other active young men won their spurs in the House; and in the great Missouri debates of 1818 to 1821 the House forced the fighting, and compelled the Senate to come to the Missouri Compromise.

From about 1830 to 1861 the Senate was on the whole the stronger body. In it the great triumvirate of statesmen, Webster, Clay, and Calhoun, made their speeches and exercised their influence; and its power of confirmation of political appointments was very important. The House was several times nearly balanced politically, and lost effectiveness: for instance, the effort of the House, in 1846–47, to force the Wilmot Proviso on the Senate was unsuccessful.

During the Civil War both houses got new powers; the Senate, however, lost its prestige in the unsuccessful attempt to impeach President Johnson in 1868. Since the Civil War the Senate has in general been more powerful than the House, because the latter body has grown too large for actual debate. The Senate still keeps up its ancient tradition that every senator shall speak as long as he has anything to say upon the question; hence speeches in the Senate make more impression on the country at large. Since the Civil War, also, the power of the speaker of the House has been greatly augmented, with the result that individual representatives find fewer opportunities to distinguish themselves. Only an unusual speaker, like Mr. Carlisle or Mr. Reed, can so concentrate the authority of the House as to make head against the Senate.

As a whole, Congress has gained power ever since 1789, not so much at the expense of the executive and judiciary, — for both presidents and courts have well asserted their prerogatives, — but by the steady increase of federal functions, due to the growth of the country, and especially to a vast gain in the importance of matters subject to specific federal powers, such as interstate and foreign commerce, coinage, banking and currency, and dependencies.

104. Choice of Senators.

The two houses are differently constituted and have different traditions. The Senate is really a continuation of the old Congress of the Confederation, in which there was an equal vote of states, with the great improvement that the two members vote separately. As representing the states, the senators must be chosen by the states; and the body within the state designated by the constitution for that purpose is the legislature.

So long as Congress took no action on the election of senators, each state for many years regulated that matter for itself: about half of them required a concurrent vote of both houses, and about half required a joint convention. In pursuance of

the constitutional provision that the method of electing senators may be made or altered by Congress, a statute was passed, July 25, 1866, for a uniform system. If on the second Tuesday of the session each house shows a majority for the same candidate, he is elected; if not, on the next day the two houses must meet at noon in joint session and cast a ballot, and continue to ballot every legislative day until some one is elected. In most cases, after a legislature is elected, it is not positively known who will be chosen senator, unless there is a state boss who looks after such matters.

Since 1881 repeated efforts have been made to obtain a a constitutional amendment providing for election of senators by a popular vote in each state, a plan first suggested in 1787. In a very few cases the result has been reached indirectly. For instance, in 1858 the Republican convention of Illinois announced that, if a Republican majority were elected in the next legislature, Abraham Lincoln would be chosen senator; and the Democrats made the same pledge in behalf of Stephen A. Douglas. The advantage of direct election would be that unpleasant forms of influence, and sometimes of bribery, of members of the legislature would disappear, and that no man could be senator who had not personal popularity in the state. The disadvantage would be that reëlection would be much less frequent; and there is no guaranty that men would be chosen of as high character as at present.

Besides the choice by the legislature, there is a provision that, if vacancies occur during the recess of the legislature, the governor may make temporary appointments till the next meeting of the legislature and the election of a successor. This power of appointment is very frequently exercised, and often the man so designated is afterwards chosen by the legislature. When the legislature has an opportunity to elect and fails to do so, the Senate has since 1850 usually refused to admit senators appointed by the governor. The state of Delaware from 1901 to 1903 had no senators because there was a deadlock in the legislature.

The qualifications for a senator are simple: thirty years old, nine years a citizen, and an inhabitant of the state from which he is chosen. Inhabiting does not always mean permanent residence, for there have been repeated cases of Western state senators who lived in New York or other states. Even the age qualification was ignored when Henry Clay appeared as senator-elect from Kentucky in 1806. State governorships are often a stepping-stone to senatorships, and successful members of the House of Representatives are frequently made senators. In some states the legislatures choose men of no large public experience, because they have great wealth and local power; and the Senate always contains many rich men; although, on the other hand, it contains an equal number of men who have no accumulation and little income except their small legislative salaries.

By the constitution, each house is the sole judge of the qualifications of its own members. This means that their contests and disputed elections and charges of fraud are settled by the houses when presumptive members appear and demand seats. Occasionally entrance is refused because the House or Senate dislikes the character of the claimant: thus, in 1899 a representative-elect from Utah was refused a seat because of polygamy.

The term of a senator is six years, but in four cases — Benton of Missouri, Morrill of Vermont, Allison of Iowa, and Jones of Nevada — the service has been five full terms, or thirty years. The likelihood that a senator will be reëlected at least once is about two to one, and the average service of a senator appears to be about twelve years. Deaths, resignations for private reasons, and resignations to receive cabinet or diplomatic appointments are not uncommon. The Senate is divided into three classes, so that the term of one third of the members expires each two years.

Power to control federal appointments of itself makes the senator a more powerful man than the representative: he knows Washington, knows the departments, knows the president,

knows his fellow-senators and the leading representatives, and hence is able to do more for a constituent, or a state, or the public interest than the average representative.

105. Apportionment and Choice of Representatives.

The English and colonial idea of representation was that places and interests were to send members: in England at the time of the Revolution, counties and cities, whether great or small, had representatives in Parliament. The New England unit of representation was the town; the Southern unit was the county. One of the greatest changes in American ideas of government came about when, soon after the Revolution, representatives began to be apportioned by population. The choice of members of the national House of Representatives is based on this principle of districts of about equal population, except that parts of two states cannot be combined to make a district.

The system of apportionment has been subject to three disturbing influences. (1) The three-fifths ratio for slaves, by which, from 1789 to 1865, in allotting members 100,000 slaves counted as much as 60,000 freemen. Since no slave voted, this gave the white people of the South relatively more influence than the white people of the North in constituting the House of Representatives. On the other hand, the Southern states had less representation in proportion to their total population; and hence the Thirteenth Amendment in 1865, which destroyed the category of slaves, thereby enlarged the relative number of Southern representatives.

(2) The unequal growth of the population. The constitution provides, therefore, that there shall be a census every ten years, in order that there may be a suitable reapportionment.

(3) The fact that electoral districts are not made by Congress but by the state legislatures, though the constitution has no specific clause on that point. In the early days of the republic, it was not uncommon to elect all the members from a state on a "general ticket"; but as the parties became sharply

divided, this meant that the majority in the whole state shut the minority entirely out. The gerrymander is frequently used by state legislatures in making congressional districts. The subjoined illustration, showing the districts in South Carolina, will make clear how little attention the states pay to the fundamental requirement that the federal districts shall be composed of contiguous territory, and shall be as nearly as may be equal in population. The South Carolina districts were skilfully arranged so as to throw large blocks of the negro vote together; and the population of the districts in 1890 varied from 134,000 in the first to 217,000 in the seventh.

In assigning the members, there has been a constant tendency to increase the size of the House; only once, after the census of 1840, was the number diminished. The apportionments have been as follows: (1789) 65; (1792) 105; (1802) 141; (1811) 181; (1822) 212; (1832) 240; (1842) 223; (1852) 234; (1862) 241; (1872) 292; (1882) 325; (1891) 356; (1901) 386. One of the reasons for the increase is that no state likes to have fewer members than it had in the previous Congress; another reason is that, even with the largest membership, the average number of inhabitants to a member of Congress has risen from 33,000 in 1793 to about 194,000 in 1903.

In reassigning members, all small states get at least one: thus Nevada, with an eighth of the population of Vermont, has half as many members. The next step is to fix the total number of the new House, and to subdivide it into the population of each state; the quotient is the number of members assigned to each. The trouble almost always comes over the fractions: Congress tries to give an additional member to every state that has a fraction more than half the quotient. The ratio in 1900 was about 194,000: a state with 875,000 inhabitants gets five members; a state with 1,060,000 still has five members; a state with 1,070,000 has six members. Wherever a state legislature has neglected to redistrict in order to provide for new members, the additional members may be chosen from the state "at large," — that is, by vote of the whole state.

A GERRYMANDERED STATE

The qualifications for members of the House are twenty-five years of age, seven years of citizenship, and inhabitancy in the state from which chosen. To these qualifications, as in the case of the Senate, the states cannot constitutionally add anything; but there is an unwritten law that the representative must live not only in the state, but in the district from which he is chosen. This is not an invariable principle: in a city like Greater New York, which sends seventeen congressmen, a man living in an up-town district may represent a down-town district; in 1890 Mr. William Everett ran for Congress from the Lynn district of Massachusetts, although he lived in the Quincy district.

The reason for this unwritten rule is the same as for members of the legislature and of the city council: people think that they will be more directly represented by a man who lives among them. In England, France, and Germany a man may stand for any district which chooses to elect him; thus young men of promise enter public life, and a man of eminence who loses his own district may get an election from some other constituency. The effect in America is to drive out of the House a man who happens to live in a district in which the majority are not of his party. The American system further leads to understandings between counties in a congressional district that county A shall have the member this time, county B two years hence, county C four years hence; and thus reëlections are less frequent.

The voters for members of Congress are the same as the voters for members of the more numerous branch of the state legislature; that is, the national suffrage is not the same in all the states. The Fourteenth Amendment provides that, for any state which denies the suffrage to male citizens except for crime, the basis of representation in the House of Representatives shall be proportionally reduced. This provision has never been applied; it would require a special act of Congress to carry it out, and would affect the Northern states which have educational qualifications, as well as the numerous

Southern states which have recently disfranchised those who cannot show to the satisfaction of election officers that they can read or understand the constitution. It is well to throw the responsibility for regulating and protecting the suffrage upon the states: a separate state and national suffrage would lead to endless friction; and if state governments undertake, however unjustly, to deprive some of their citizens of votes, it is in practice almost impossible for the federal government to maintain the franchise.

For many years the elections for members of the House were held at various dates, and sometimes lasted for several days within one state; but the constitution gives to Congress distinct power to make or alter regulations as to time, place, and manner of holding elections. Three sets of acts have been passed, of which two are still in force. (1) In 1842 Congress prescribed that thenceforth all members should be chosen by districts, and not by general ticket. (2) By acts of February 28, 1871, and February 2, 1872, Congress provided for elections by ballot, and for the choice of all members of the House on the Tuesday succeeding the first Monday of November; by an amendment to the last statute, a few states which hold early elections are still allowed to choose congressmen at a little earlier time. Should the states defy the provision for choice by district or on a fixed day, the remedy would be for the House to refuse to seat members so chosen. (3) The third series of acts were those of May 21, 1870, and February 28, 1871, providing for the control of elections by federal officials in the South and in the Northern cities, especially in New York; these acts were repealed in 1894, since which time the United States has taken no responsibility for the conduct of elections.

Although the intention is that congressional districts shall be about equal in population, there is a marvellous difference in the votes cast in different states. A Mississippi district, with 143,000 population, in 1890 cast 2,800 votes; an Indiana district, with 129,000 people, cast 9,000 votes; a South Carolina district, with 217,000, cast 13,700 votes; a Massachu-

setts district, with almost the same population, cast 29,000 votes. For many years the New England states required a majority of all the votes cast; but Rhode Island, the last state to stand by the system, gave it up in 1894, and the states now all accept an election by plurality; hence members of Congress are frequently chosen by a third or less of the votes cast, which may represent not more than a fourth of all the voters; but the alternative is a second or a third election, which tires people out. The governor cannot appoint members to fill vacancies in the House, but must call a special election; the result is that there are almost always a few vacant seats.

The members of the national House of Representatives are in general men of intelligence and character; most of them are lawyers; there are also many business men, and an occasional doctor or minister. Most of the members elected have seen service in the state governments, very often in the state legislatures. Although their term is two years, the likelihood of being reëlected even for one term is distinctly less than that of a senator. In the first place, a man cannot be reëlected without being renominated; or, even if he desires to return, he may have offended important constituents, or he may have entered into an agreement that he would retire at the end of one term, or he may fail to "keep up his fences," as the phrase goes; or, even if nominated, there may be a political upheaval in his district so that he loses his seat. The average term of service in the House is not more than four or five years; yet Joshua R. Giddings represented the same district from Ohio continuously from 1839 to 1861, and Samuel J. Randall sat for Pennsylvania from 1863 to 1890. Although some members of the House are not scrupulous about the use of political power, it is a body little subject to corrupt influence; since the Credit Mobilier investigation of 1872, which unfortunately involved some innocent persons, there have been no great scandals in the House. The members of Congress as a body will compare favorably with any assemblage of lawyers or doctors or ministers or college professors in the land.

106. Meetings of Congress.

Under the constitution, Congress meets annually, and may be summoned in extra session by the president at other times. Ever since 1789 the annual meeting has been on the first Monday in December. In fourteen instances Congress has been summoned by proclamation before the regular time, — for instance, on July 4, 1861, to make preparations for the Civil War. In 1867, 1869, and 1871, by special statute Congress met on March 4, the purpose being to keep a watch on President Johnson; the act was speedily repealed after President Grant came into office in 1869, and has never since been renewed.

A consequence of this flexible system of membership is that, since a Congress expires on March 4 in the odd year, and the new Congress may be called at any time thereafter, it is necessary to elect members of the House in the November election beforehand. If there be no called session, the members then chosen will not assemble until December, thirteen months later; and hence a wave of popular feeling is often spent long before Congress is organized. This is in sharp distinction to the practice of most state legislatures, which begin only a few weeks after the election of new members. One result of the long postponement is that a new president commonly has from March 4 to the following December to get his administration in order before Congress comes together.

Either house may be called separately if necessary, but in practice only the Senate is so called, and that in the first weeks of the presidency, to confirm the nominations of the new cabinet. By the constitution, neither house can adjourn for more than three days without the consent of the other; but the two houses usually agree beforehand on a day when they will adjourn.

The actual length of the sessions of Congress depends on circumstances. In every odd year Congress expires at noon

on March 4, and hence the so-called "short" session is ordinarily about four months, interrupted by the holidays. The long session might in theory last from December to the next December; but Congress usually adjourns in June, July, or August. The longest session on record is that of 1890, when there was no adjournment until October 1, after 240 days of session.

There is nothing in the constitution to show when a Congress expires; but, since the day fixed by the old Congress for the organization of Congress was Wednesday, March 4, that day at noon has been the dividing-line between two Congresses. It is not uncommon to set back the clock, and thus to transact business for a few minutes or hours after the real time of adjournment. All unfinished legislative business then perishes: bills which have passed one house and are pending in the other cease, and must be renewed at the next session in order to get a standing.

Congress met from 1789 to 1791 in New York; from 1791 to 1800 in Philadelphia; since 1800 the place for the meeting of Congress has been the national Capitol in Washington. The Capitol is under the control of the two houses, which provide for its policing and subdivide its rooms at their convenience. The organization of the Senate is permanent; the House is entirely newly elected, and must be called to order by the clerk of the preceding House, and only persons who appear on his roll are entitled to seats. On one occasion, in 1839, when the House was very close, the clerk practically dictated its organization by refusing to seat five persons who had certificates from the governor of New Jersey; and it was several weeks before the House could be organized.

107. Privileges and Obligations of Members.

Membership in Congress carries with it, not only prestige and opportunity, but substantial benefits and the performance of duties. In the first place, every member of Congress draws a salary. The House of Commons and most European parlia-

ments are unpaid; but the constituents of some colonial assemblies paid their members, and from the earliest organization of a Continental Congress the state legislatures made allowances to their members in Congress. The constitution provides that both senators and representatives shall be paid out of the federal treasury. From 1789 to 1815 the compensation was six dollars per diem; from 1817 to 1855 it was eight dollars. The actual number of days during two years' service was probably never more than 300, making an average salary of less than $1,200 per year. On March 19, 1816, an act was passed for a salary of $1,500 per year, which was repealed within twelve months on account of a terrible storm of popular opposition. In 1855 a salary of $3,000 was voted, which was raised to $5,000 in 1865. In 1873, the last day of the session, an act was passed raising the salary to $7,500, thereby granting a bonus of $5,000 to every senator and representative. Again there was a perfect storm of public disapproval; and several members of Congress, among them James A. Garfield, refused to touch what they considered a fraudulent income. A few days after the beginning of the next session the law was repealed, and the salary was restored to $5,000 a year, where it now stands. With the present membership of Congress, this involves the payment of over $2,500,000 a year for salary and mileage.

Mileage, from 1789 to 1815, was six dollars for every twenty miles of travel; from 1817 to 1865 it was eight dollars for every twenty miles, or forty cents a mile; from 1865 to the present day it has been twenty cents a mile. Mileage is granted for one round trip in each session; but it is very much in excess of the actual cost of travel at present, and members of Congress who have railroad passes find it a clear payment. It is estimated that the allowed mileage about pays the fares of a congressman, his wife, and three children. Members from very distant states have sometimes drawn an enormous mileage: there was a time when the shortest route from Oregon was about 5,000 miles, and the fortunate member drew $2,000 for his round trip.

Another privilege of members of Congress is their post-office frank, which with some brief interruptions has lasted ever since 1789. It was sometimes abused in early days, when letters were expensive and before the express service was developed: members of Congress are said to have sent home their washing to distant states. At present the franking privilege to a busy member of Congress, though intended to apply only to official letters, saves him about $300 a year.

Another use of the word "privilege" covers the protection of members of Congress from arrest, in all civil and most criminal cases, while on their way to and from a session of Congress, or in Washington during its continuance. Still another privilege is the right of a member to be free from responsibility anywhere else for words spoken in his congressional house: no member can be prosecuted for slander or libel for anything said in debate.

The first official duty is that of being present at the meetings of one's house. The pressure upon the time is so great, and the amount of routine business so large, that many faithful members are not always in their seats while the sittings are in progress. In fact, they are not always in Washington, for they may have private business to look after at home; though it is expected that a member of the House will not leave the city without notifying the speaker. As election approaches, members are very impatient to get home and look after their "fences," — that is, to make preparations for a renomination. Commonly, when a member wishes to be absent, he arranges with some one in the opposite part for a "pair" on all party questions; that is, since neither votes, no majority is affected. Pairs are regularly announced in the voting lists.

While the sitting is going on, members may be in committee rooms, though committees are ordinarily not allowed to meet at that time; or they may be in a lobby talking things over with other members or with constituents. If any member calls the attention of either house to the fact that less than one half

of the total number (that is, 46 in the Senate and 194 in the House) are present, business is stopped until a quorum can be brought in, and pages are sent out for members. When filibustering or night sessions are going on, a number less than a quorum may send out the sergeant-at-arms to bring in members wherever found, a procedure involving much confusion. The rules of the House require that a member shall vote unless formally excused; but John Quincy Adams in 1832 set the precedent of refusing to vote, and since that time no member has ever been disciplined for that offence.

Another obligation is to keep order, a duty enforceable by votes of censure and other like penalties, and by the right of each house to expel members on a two-thirds vote. The use of personal and abusive language, acts or threats of violence, unseemly or treasonable expressions, may be visited with censure, but never by suspension for limited periods from the privileges of the House. Probably either house might imprison one of its own members, though there is no such case recorded. Expulsions have been few: the attempt was made in 1837, and again in 1842, to expel John Quincy Adams from the House for speaking his mind on slavery; a senator from Indiana was expelled from the Senate in 1863 for treasonable utterances; and a member from South Carolina in 1870 for selling West Point cadetships. Expulsion, which requires a two-thirds vote, must be distinguished from refusal to receive a member who claims to be elected but has not yet taken his seat, which requires only a majority.

Something might be said of the unwritten duties of members of either house, — the duties of attending committee meetings, and looking after the public interests by voting for good measures and against bad ones. Some years ago, one member of Congress, not otherwise very efficient, got a great reputation and the nickname of "the Great Objector," by protesting against every proposal to increase appropriations. In general, the members of the House and Senate fairly represent the public opinion of their constituents; and to represent one's

constituents in open and honorable measures for the public good is one of the most important duties of the legislator.

108. Speaker of the House.

The officers of the two houses, aside from their respective moderators, are not important. The secretary of the Senate and clerk of the House are the recording officers, each with a staff of subordinates. Each house has a sergeant-at-arms, a postmaster, and a superintendent of documents. The selection of minor officials is honeycombed with politics, and has sometimes led to queer arrangements by which one set of men do the work and divide the salary with another set who have the nominal appointments. The doorkeepers have some influence because of their opportunity to bring constituents and members together. In 1875 a doorkeeper drew down upon himself the laughter of the nation by writing a letter (which became public) containing the boast: "I have more invitations to frolics with members and senators than any man in Washington. I am a bigur man now with the members than old Grant."

The presiding officer of the Senate is the vice-president of the United States. Several have won a reputation for dignity and skill in that position, especially Thomas Jefferson. In addition, the Senate chooses a "president pro-tem," who takes the chair when the vice-president is absent, or when, as has five times happened, the vice-president becomes president through the death of his predecessor. Either vice-president or president pro-tem may vote on a tie; but each acts only as a moderator, and has no special power through his office.

Quite different is the status of the speaker of the House of Representatives, who is always chosen out of the membership, and has come to be second in political dignity only to the president of the United States. The speaker of the House of Commons in England has for two centuries been simply an impartial presiding officer; but in the colonies the speakers of the assemblies were often heads of the opposition, and the practice was early followed out by Congress. The second

speaker, Jonathan Trumbull, elected in 1791, was intended to be a party man; the first great political speaker was Henry Clay, elected in 1811 and five times chosen thereafter. From that time on, whenever the speaker has been a man of strong personal character, he has always been one of the greatest forces in American government.

The speaker is always a party candidate, and represents his party in the House. The election of speaker has of late years been practically decided before Congress met; but earlier there were several exciting struggles. In 1839, for instance, it took more than a week to elect Speaker Hunter; in 1849, after 59 ballots, no speaker was elected and the House agreed to choose by plurality, whereupon Howell Cobb was elected; in 1855 the House was so split that it took two months to elect a speaker, Nathaniel P. Banks finally receiving a majority; in 1859 two months were again needed, resulting in the choice of Pennington.

The speaker, when once chosen by a majority of the members of the House, becomes more powerful than the majority which chose him; in some cases he is a political Frankenstein, more powerful than all the rest of the members put together. His power comes from the gradual evolution of three great functions.

(1) The speaker has the right to appoint committees, a power which he has held since January, 1790. As the standing committees grew up and legislation was parcelled among them, this function became more and more important; for no measure can come before Congress that is not reported on by a committee, and hence the make-up of the committee may determine the fate of a great bill. Furthermore, members are eager for the committee appointments, which carry responsibility and opportunity; and the man who designates them is therefore powerful.

(2) Another of the speaker's functions results from the fact that he has the right to recognize what member is entitled to the floor. Since no motion can be introduced, no bill re-

ported, no speech made, except by a member recognized by the chair, the speaker may practically cut off any member's opportunity for distinction. From this point it is but a short step for the speaker to refuse to recognize members because he does not like them: there have been repeated cases of members practically boxed up during a whole session, or during their whole term, because the speaker somehow could not see them. In fact, during the last fifty years the speaker has been in the habit of keeping before him a memorandum of members who have asked beforehand that they be recognized when the time came.

(3) The speaker has even greater power over legislation, by his right to state and to put questions and to decide points of order; through this power he controls the formal business of the House, and exercises great personal influence. He expects to know what a member is going to introduce before he will recognize him; and the speaker frequently refuses to recognize one of his own party if he tries to make an important motion which has not been agreed on by the conclave of leaders. No prudent member of Congress thinks of getting a bill through unless the speaker is so far satisfied that he will permit it to come to vote; that is, the speaker practically has a veto power on every proposition in the House, if he chooses to exercise it. So well is the speaker's power understood, that wise outsiders who desire legislation not only seek to interest members to introduce their measures and to vote for them, but also plead with the speaker to permit them to pass. If it be asked why the House does not sometime rise up and depose the speaker by a majority vote, the answer is that by long experience members have learned that they cannot get forward at all without pulling together, and that if they put down one speaker they must set up another who will exercise the same powers.

109. Congressional Committees.

Next to the speaker, the most powerful influence in Congress is the committee system, which is strongly intrenched in both

the Senate and the House. As soon as a speaker is elected, he sets to work to make up his list of appointments, in which he is freely advised by members who wish to get upon particular committees. As there are 386 members of the House, and only something like 600 committee places, the process is not easy or swift. First of all, the committee places are roughly divided in proportion to the two parties, all the House chairmanships now going to the majority party; then old members are, so far as possible, continued on the committees on which they have served; then there has to be a reasonable recognition of the different sections of the Union; then comes the personal pressure of members who want a particular committee, and especially a committee that has something to do. The speaker shuts himself up in his room, but eager members and their friends reach him; and he sometimes flies from Washington for a few days. When the list is announced, many party friends and still more of the minority members are sure to be disappointed.

In the Senate the committees are appointed in a less responsible fashion. Nominally the choice is by ballot; practically the Steering Committee of the majority decides how many places the minority ought to have; occasionally an opposition senator is left as chairman of a committee. Then the Steering Committee of the minority divides up the places of that section according to its judgment. Meanwhile the majority conclave has made its assignments, and the two slates are then brought together and voted for on a nominal ballot. As two thirds of the Senate always hold over, and as half of the other third will probably be reëlected, committee changes are few. The Senate committee places are relatively more numerous than the House, and the principle that distinguished men gradually come to the headship of committees is more distinctly established.

All the important committees have rooms for meeting in or near the Capitol. Since many of them meet seldom, and some not at all, the use of the room is considered the perquisite of

the chairman of the committee, who also has a committee secretary paid by Congress. The sessions of the committees are held under the chairmanship of the first person named in the official list, for congressional committees do not choose their own chairmen.

The sessions of the committees are popularly said to be held in secret, which is also the case with sessions of a church vestry or of an executive committee of a scientific association; in fact, ordinary committee proceedings are easy to learn by any one who is interested. Committees meet from day to day, and often the most laborious part of a member's service is his committee work. Sometimes as many as a thousand bills are referred to a single committee in a session; and the great committees on commerce, manufactures, public lands, post-offices, pensions, war, navy, public buildings, Indian affairs, rivers and harbors, and especially the House Committee on Ways and Means, which originates financial measures, spend a great deal of time and trouble over their bills. A somewhat unusual practice is the holding of public sessions, at which interested persons may appear and express their minds: for instance, when a tariff bill is on the stocks, those interested in a particular industry appear and submit suggestions. Occasionally reports of hearings are printed and may be had by interested people. Committees frequently carry on investigations and summon witnesses, who are heard in public. The decisions of the committees are all made in private session, usually without the presence of the secretary.

The purpose of the committee system is to subdivide the great field of legislation which belongs wholly to Congress, so that each division may receive due attention. Congress must provide for the improvement and extension of the various branches of the public service; it must keep up a code of criminal law; it regulates foreign commerce and prepares for war and peace; in addition, an unreasonable amount of petty legislation for particular individuals is thrown upon Congress.

The result is an enormous mass of work to do; and in these

conditions the committees are a sifting machinery, without which both houses would be simply buried under bills. The result, however, lacks unity: the speaker appoints the committees, but he cannot remove members because they do not follow his advice; the committees act independently of each other and often oppose each other. What, for instance, should be done with a bill providing that the express business of the country be made a monopoly for the post-office department? Bills might be reported on that subject by the committee on post-offices or the committee on commerce; and very likely each chairman would try to keep the other chairman from reporting.

The lack of harmony between committees is especially seen in financial matters. For example, up to 1865 one committee brought in all the bills for the expenditure of the government; but in 1903 there are eight committees, each of which reports its own bills, and no one of which is responsible for all the expenditures of the government. In the second place, since 1865 the committees to report bills for expenditures have not been identical with the Ways and Means Committee, and hence Congress is asked to spend money by those who have no responsibility for providing new sources of revenue. Substantially the same holds good in the Senate, although the appropriation bills there are not so much broken up. The existence of the committees makes impossible an orderly and systematic national finance, a difficulty that is to some extent met in the House by the speaker, whose power is such that he can insist on changes in the finance bills; and in the Senate by the steering committee, which tries to agree on a policy with regard to revenue and expenditure.

CHAPTER XIV.

CONGRESS AT WORK.

110. References.

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111. Open and Secret Sittings.

The meetings of Congress have three purposes, — to record action taken, to discuss measures, and to come to a vote. During the session the two houses sit at such times and for such a number of days each week as seem good to them.

The session of 1899–1900 lasted 185 days, of which 24 were Sundays, 16 were days on which neither house was sitting, and 13 were days on which only one house was sitting. Ordinarily the houses meet at noon, and sit for four or five hours. Congress occasionally sits on Sunday, in which case the proceedings are entered on the record as of the day previous. Evening sessions are unfavorable either for discussion or for intelligent voting; and the all-night sessions sometimes held when filibustering is going on, are scenes of confusion.

There is no constitutional provision that the houses shall sit in public: in its first two years the Senate invariably held private sessions, so that we should know little of the detail of its earliest discussions but for the diary of Senator Maclay of Pennsylvania. In 1793 the Senate opened its doors for ordinary legislative business, and in 1802 permitted a stenographic reporter; but whenever a majority votes to "go into executive session," the spectators are ejected and the doors closed. Senators are bound in honor not to divulge the proceedings of this executive session, which is almost invariably devoted to nominations for office and to treaties. All the officers are sworn to secrecy, and even the journal of these sessions is separately and privately kept; nevertheless, the newspapers almost invariably report the next morning any important action or debate in the secret session. The executive journals up to 1869 have been published. The House has sometimes sat in secret, as for instance in 1807, at the time of the Burr insurrection; and in the history of the United States there is one secret statute, the act of 1811 for taking possession of West Florida.

About 1800 some enterprising newspapers began an extended report of the open debates. In 1833 the *Congressional Globe* — a private venture — began to publish verbatim debates, and after 1846 Congress regularly subscribed for several thousand copies. In 1873 was established the official *Congressional Record*, conducted by paid officers of Congress, intended to be a verbatim report of what is actually said on

the floor. These reports are often toned down by the stenographers, and every member has a right to revise his own speeches; hence pungent expressions are often struck out. In addition to this record of debates, each house is under the constitution required to keep a journal, which is simply a dry statement of the introduction of measures and amendments, and of the votes upon them, published annually.

The ordinary business of both houses goes on in the midst of spectators. The original Capitol had small rooms for both House and Senate; but when the great wings were constructed in 1859, the room of each house was surrounded by sloping galleries on four sides. The House galleries seat 2,500 people, the Senate galleries 1,200; and when there is a lively debate or an interesting speech, the galleries may be crowded. Privileged visitors are accommodated on the sofas behind the desks of the members.

The English Parliament and House of Lords are fitted with benches, accommodating not half of the members. Members of Congress have each a desk; but when members cannot easily hear what is going on, they are likely to spend their time in reading or writing letters, or in conversation with their neighbors. In both houses, routine business frequently goes on with not a dozen members paying attention, each party having a watchful leader who takes care that nothing shall be done by stealth. Under such circumstances, the give-and-take of debate is diminished. Senators can hear each other; but in the House the space is so large that few voices carry across the room.

112. Rules and Party Management.

One of the triumphs of the Anglo-Saxon race is its development of a system of parliamentary procedure. The French Chambre is a noisy body, in which order is supposed to be secured by ushers with chains of office around their necks, but in which members are frequently interrupted by howls of derision that drown their voices. Though disorder is not un-

known in the English Parliament and in Congress, it is uncommon, because they have regulations intended to give every speaker a fair chance. Simple rules of order were employed in the colonial assemblies, in the Continental Congress, and in the Congress of the Confederation; and with the organization of the two houses in 1789 began a new development of parliamentary law. Thomas Jefferson, while vice-president from 1797 to 1801, wrote his invaluable treatise, commonly called *Jefferson's Manual*, which assembled and classified the principles usually observed in England and in the colonial and state deliberative bodies; and to this day *Jefferson's Manual* is the standard of parliamentary law in both houses of Congress, unless modified by distinct rules.

By the federal constitution, each house has the power to "determine the rules of its proceedings." The Senate is a more conservative body than the House, and is continuous; and therefore it alters its rules less often and less radically than the House. The purposes of the rules in both houses are simple: to allow any member to introduce measures; to give the majority the power to determine what measures shall come up for debate and vote, and in what order; to give every member a fair chance to express his mind and to offer amendments on pending questions; to secure good order and quiet. In course of time, as business has increased and as the members of both houses have grown more numerous, and especially as committees have increased in number, only a part of the business which members desire to bring forward can possibly be discussed; hence there is a constant pressure to get the time of the House. Individual members want to introduce resolutions and amendments and to make speeches; committees want to get their measures reported to the House so that they may be considered and passed; party managers want to avoid questions that may hurt their party, and to bring to a vote questions to which the party is committed.

The rules have now grown so numerous — forty sections in the Senate, filling thirty printed pages — that only those who

are in the habit of using them daily understand just how to bring up or to side-track a motion. New or slow members are therefore at a great disadvantage, and the houses often get so tangled up by their own parliamentary law that they cannot reach preferred measures. In 1842, for instance, a resolution to censure Joshua R. Giddings of Ohio took such a form that the speaker ruled that Giddings could not, under the rules of the House, speak in his own defence. The speaker or, if the speaker be not in the chair, the speaker pro-tem, or the chairman of the Committee of the Whole, has the power to apply the rules; and though any decision on parliamentary law may be overruled by a majority vote of the House, such action is unusual. It is possible, therefore, for the presiding officer to apply the rules so as to cut off or to extend debate, to prevent or to allow a vote; and he may deliberately use that authority for party purposes. More often, however, on the spur of the moment he is obliged to decide complicated questions involving the precedents of many years; and the fairest speaker may make mistakes.

The rules of the House expire with the House; it is common, however, at the beginning of a new Congress to readopt the rules of the preceding House, and afterwards to make such amendments as may be necessary. The constitution makes a "majority of each house" — that is, a majority of all the members — the quorum necessary to do business. For many years the recognized method of finding out whether a majority were present was to call the roll; but it had grown to be a custom for the minority to sit silent under roll call, so that if some of the majority were absent no quorum would appear. On January 30, 1890, a test vote showed yeas 161, nays 2, not voting 165; whereupon Speaker Reed directed the clerk to enter as "present" (and therefore making a quorum) some of the silent members whom he saw sitting before him. The majority then made new rules, under which the speaker had the definite right to count a quorum. In 1893 a new speaker, Judge Crisp, was endowed with substantially the same powers

by the former minority, and they have been continued ever since.

Since 1860 there has been a House Committee on Rules; the speaker is chairman, two members are the principal leaders of the majority on the floor, and the remaining two members are the principal leaders of the minority. On routine matters the committee sits as a whole; on really serious questions the three majority members constitute the committee. Since 1889 the committee has by various steps acquired the parliamentary right to "bring in a rule"; which means that it may at any time, even when a member is speaking, make a report which (after one motion to adjourn has been voted down) must forthwith be voted upon. These so-called "rules" direct that the House shall take a specified bill into consideration, or shall come to a vote at a specified time; that is, these three men practically decide what shall be the order of business; and in the pressure on the time of the House, the most important propositions will probably not be brought to a vote if they refuse to "bring in a rule."

Thus within the last fifteen years has slowly developed a guiding principle for the debates of Congress. The speaker and two members, one of whom is usually the chairman of the Ways and Means Committee, assume the same kind of leadership that in England is taken by the ministry. Since they can answer only for the lower house, the complete working-out of the system requires what is called the "Steering Committee," — an unofficial conclave of members of the Senate and the House, especially the three majority members of the Committee on Rules. As guides to the majority, the Steering Committee practically decides what measures to press to a vote and what measures to drop; from this it has been a short step for it also to decide what kind of party measures shall be introduced, and what shall be the text of those measures. Thus, by a roundabout, inconvenient, and rather irresponsible method, Congress has reached the same point as Parliament, — namely, that a committee which has the con-

fidence of the majority of the members shall draft and present measures for their action. The main difference is that the Senate is as strong as the House, not an unequal partner like the House of Lords; and it is a work of some difficulty to keep the majority in both houses in line on questions of policy.

113. Parliamentary System and Congressional System.

The English parliamentary system and the so-called "congressional," or committee, system are fairly rivals in representative government. The British system has been followed in France, Italy, Belgium, Denmark, Sweden, and to some degree in Austro-Hungary; parts of the congressional system are followed in Germany and Switzerland. The main differences between the two involve the relation of the legislative with the executive, and the preparation of legislative measures. Many critics of American government hold our system inferior on both counts to the English responsible ministry, which is in effect a joint committee of the two houses, numbering about nineteen and possessing the confidence of the House of Commons. The ministry takes charge of both the executive and the legislative business of the English nation: the different ministers are heads of executive departments, the details of which are carried on by permanent chiefs; and at the same time the ministry as a whole is a board for deciding on the executive policy of England. The ministry as a whole also decides what legislation shall be submitted to Parliament, drafts bills, fixes the order in which measures shall come up, and agrees on the attitude which the government will take on amendments offered in Parliament. If the ministry — or any member of it — is out-voted on any serious question, it forthwith resigns; hence its supporters must squarely back it up.

Under the congressional system, the executive business is nearly all out of the hands of Congress, because conducted by a president elected for four years, not affected by majorities against him in Congress, and appointing directly or indirectly

all subordinate officials. The chieftains of the majority in Congress have no control over executive matters; in like manner, the president and his cabinet are not responsible for legislation, and cannot introduce official measures. On the other hand, the president knows that he has four years to carry out his policy; he is therefore less subject than the English prime minister to temporary currents of public prejudice, and he is not obliged to make concessions in order to remain in office. The relation between the executive and the legislative is much closer than appears on the surface; for, besides the president's official and unofficial influence over legislation, the members of the cabinet appear before committees of the House and Senate to urge the introduction and passage of measures which they think desirable. The subdivision of public business among standing committees has many serious drawbacks, but it is not a necessary part of the congressional system.

In the long run, the congressional system works about as well as the parliamentary, and in some respects it works better; for, where there are three parties under the parliamentary system, it is difficult to keep up a stable administration. France during the last thirty years has had about forty ministries. In the United States the executive goes on steadily and undiminished, even if no party has a clear majority in the House or the Senate.

114. Preparation of Measures.

The preparation and introduction of measures in Congress is still very free. Any member may at any time deliver a bill to the speaker, who refers it to the appropriate committee; many bills are drafted by constituents and other outsiders, who perhaps employ a lawyer to arrange the details of their measure, and ask some member to introduce it; reform associations of various kinds draw up bills; labor associations draft bills and urge their adoption: there could not be greater freedom in bringing measures to the attention of Congress.

Many bills for the improvement of the executive or judicial service of the government are drafted by executive or judicial officers, and introduced at their request by friendly members, or filed with committees for their consideration. Members of the cabinet habitually draw up bills and seek to get them passed, — for instance, the so-called "administrative tariff bill" of 1890 was largely the work of Daniel Manning, previous secretary of the treasury. Occasionally the president sends a message to Congress, enclosing a bill drawn by a cabinet officer.

To get a bill framed and reported is another matter. The actual form of the bill and, in all serious measures, its phraseology come from the committee to which it is referred, and are often the result of weeks and months of consideration. It is here that an able, steady, and sagacious member often renders his best service, by standing up for right principles and for a careful and clear statement of the proposed law. Occasionally some member, usually the chairman of the committee, finds his name permanently attached to a bill, — as the Loud Post-Office Bill, the Dingley Tariff Bill, the Edmunds-Tucker Anti-polygamy Bill.

In early days the House and the Senate used to instruct committees what kind of bill to draw; and occasionally after discussion a bill is now recommitted with instructions. More often, if the committee sees that the House is dissatisfied with the form of a reported bill, it asks to have the bill recommitted, and tries to meet the objections. The great political measures, however, must be passed on by the steering committee before they can really get to the discussion point; and no one outside of Congress knows exactly who is responsible for the form of the bill that is at last laid before the House for serious consideration.

115. Influences on Congress.

When a measure is once open for discussion, its fate depends upon a great variety of influences. One of the most powerful

is the president of the United States, who not only recommends legislation in his encyclopedic annual message containing advice on fifty different public questions, but may also send special messages recommending particular measures; and such messages usually attract public attention. For example, in 1902 President Roosevelt specially addressed Congress to pass a bill for reciprocal trade with Cuba.

A still more potent influence is that of the party leaders in and out of Congress, who constantly consult with each other and decide whether a particular measure will help or hurt the chances for the next election. This influence is communicated to Congress very effectively through the steering committee. Of course if the majority in either House is determined upon a measure, the leaders must give way or lose their influence; but experience shows that the road to a member's success in getting measures through and in carrying elections, is to avail himself of the skill of leadership; and that little progress is made by throwing the leaders overboard.

Behind both organized Congress and leaders is the subtle force of public opinion. Members of Congress are diligent readers of newspapers, and are more affected by the private letters and telegrams of men of mark in their districts than by almost anything else; hence a favorite method of influencing legislation is for individuals or organizations to send out circulars urging people to write to their senator or representative for or against some pending bill.

A very powerful influence is the party legislative caucus, called in one or the other house to discuss public measures. The vote of the majority of the caucus is considered to bind; hence members who have made up their minds not to accept the caucus decision usually stay away. Since the perfection of the steering committee, the caucus has become a less frequent and effective method of concentrating party votes.

General appropriations, like the river-and-harbor and public-building bills, are much affected by "log rolling," — that is, a number of members agree each to vote for the item desired

by the other. Another force is the lobby, by which is meant those men, and sometimes women, who make it a business to argue with congressmen and to solicit their votes. Some of these lobbyists are paid attorneys of corporations; many of them are former members of Congress, who understand the inner workings of the body. Attorneys and counsel are often allowed to come before committees of Congress and to make formal arguments.

Members of Congress, like other men, are much influenced by the desire to please their old friends and to make new ones; and votes are often given without much thought, because asked for by a man of influence. In many states the senators have such a hold on the political machine that they can prevent or allow the renomination of members of the House; and this power gives large influence to the requests of such senators for votes on behalf of favorite bills.

Legislation is affected by the president through his personal relations with members. Every strong president is constantly explaining what he desires, and why he desires it, to senators and representatives; and sometimes he intimates that he will veto a bill if it is not modified. Some presidents threaten to take away the patronage of members who vote against their favorite schemes: thus, in 1860 President Buchanan was accused of promising offices to the friends of members who would vote for the Lecompton Bill.

Direct corruption in Congress has been very rare, though during the Civil War there were some actual cases of the payment of money for votes or privileges, and during Reconstruction three members of the House were found guilty of selling nominations to West Point. Occasionally members accept stocks and bonds as gifts, or take them over at low prices, with the understanding that they will make them valuable by voting for the pending measure. During the last thirty years, however, few legislative bodies in the world have been freer from charges of the transfer of votes for money or direct valuable considerations.

116. Debate in Congress.

A main reason for the existence of Congress is to provide a forum where arguments may be confronted, and, if possible, disproved on the spot. This great responsibility is still maintained by the Senate, for under the rules of that body any senator may speak on any question so long as he has anything to say.

In the House of Representatives, however, it is physically impossible for 386 men each to express his whole mind on every pending question; hence debate is limited in several different ways. (1) A man cannot be heard unless he gets the floor, and he cannot get the floor unless the speaker recognizes him. (2) Since 1847 it has been a rule of the House that no member shall speak more than an hour on a pending question, except the member in charge of the bill, who may have an additional hour at the close. (3) In the Committee of the Whole, where debate is really most active, speeches are limited to five minutes on each question. (4) The method of "bringing in a rule" cuts down to very narrow limits the time allowed for debate. (5) It is the habit of the man in charge of a measure, after a brief discussion, to move "the previous question," a step which cuts off debate altogether.

He is a favored member of Congress who gets three or four chances in a session to make a speech long enough to develop a subject, and very few men have the opportunity to influence the House by their remarks. Hence the bad habit of "leave to print," which means that a member prepares a speech, about an hour long, to be printed in the *Congressional Record* without having been delivered at all. Time is taken from debate by the skirmishing between the chairmen of committees to get the floor for their bills: sometimes half an hour to an hour is spent simply in getting the House to decide which committee it will hear first. The growth of the steering committee tends to do away with this evil.

Nevertheless, upon questions in which the country is deeply interested there is plenty of discussion: the House almost

always thoroughly debates appropriation bills, perhaps because each has behind it a committee which has worked hard to prepare it and feels concerned to see it through.

Partly from the Anglo-Saxon tradition of fair play, partly from the acknowledged power of the speaker and the president of the Senate, debate is usually decorous. The speaker enforces order by his gavel, by admonition, and if necessary by calling the member to order. The general rule of deliberative bodies is that a member who once gets the floor is entitled to continue his remarks until his time has expired, without interruption; but certain privileged committees may come in with their reports and cut him off, and members are subject to interruption by questions from other members. Some congressmen like Mr. Blaine get a reputation for adroitly parrying such attacks. At present the most effective kind of speech in House or Senate is that of a party man who declines to go all lengths with his party and expresses his individual convictions. One feature of debate in Congress is the very free use of extracts from books and newspapers, which are commonly sent up to be read by the clerk. A few years ago a member thus offered in sections the whole of Mr. George's book, *Progress and Poverty*, and got it printed in the *Congressional Record*.

The sharpest and most effective debate is in the Committee of the Whole, to settle details of a bill which is likely to pass, the question of the formal text remaining to be settled later. Here, under a chairman designated by the speaker, the House proceeds by a somewhat simpler parliamentary procedure: any member may speak five minutes on the question; if he has more to say, sometimes he moves to strike out the last word of the pending question, thus making a new issue on which he claims the right to speak five minutes; when the discussion ends, the speaker resumes the chair and the chairman reports to him what the committee has been doing. Votes in the Committee of the Whole are provisional; the question comes up again in the House in regular session.

The spirit of good order is apt to decline in the last hours of the session, when bills are hanging in the fate of which members are interested. All-night sessions are frequent, especially on the night between March 3 and March 4. Every effort is then made to persuade the speaker to recognize particular members; reports of conference committees come in, interrupting all other proceedings; clerks and members fly back and forth between the houses and to the president; debate is impossible; the briefest abstract of a bill is all that can be secured.

Closely connected with the freedom of debate is the question of obstruction, — that is, attempts to defeat or delay a bill by appeal to technicalities of parliamentary law, by points of order, by amendments and amendments on amendments, by demanding yeas and nays, by motions to substitute, to lay on the table, to adjourn, and again to adjourn. Filibustering differs from obstruction only in being more systematic and longer continued. In the Senate it takes the form of long speeches: for instance, on the Federal Elections Bill, between December 1, 1890, and March 4, 1891, there were in the Senate twenty-five set speeches against the bill, occupying 266 pages of the *Record*,—about thrice the length of this volume,—one of the speakers alone taking up 49 pages. The bill was killed by the announcement of the opposing senators that they would talk indefinitely; and a proposed rule to permit the Senate to cut off debate was abandoned after nearly a month of time-consuming speeches. Still, a determined majority in the Senate can always get a vote if it insists. A favorite method of breaking up filibustering is to hold all-night sessions, the majority sometimes appearing in relays; but the minority is likely to wear longer in such a contest, for their object is to call the attention of the country to the pending measure, and thus to put pressure on the majority members, urging them to give way.

In the House, which is so much larger than the Senate, and in which tradition plays so much smaller a part, various means of checking filibustering have been found. The first is the

"previous question." In 1812 the House adopted the practice of permitting anybody who could get the floor to move "that the main question be now put." This motion is undebatable, and must forthwith be put by the speaker; if carried in the affirmative, debate at once ceases and the "immediate" — that is, the then pending — question must be voted on; if amendments are pending, they may also be voted on in their reverse order without debate. Used at first intermittently, the "previous question" has long been a standing practice of the House, and it is employed not only to cut off tedious debate but to prevent the minority from stating to the world its reasons for disapproval. It is also used habitually to bring the House to a vote after debate is finished, lest the bill lose its place by some accident.

What will control motions made simply with a view to delay? The speaker has long been in the habit of failing to see a man who presumably wants to filibuster; but he cannot safely refuse to give opportunities to the recognized leaders of the minority. In 1890 a new rule was adopted, giving the speaker authority in his discretion to refuse to entertain "dilatory motions." Under parliamentary law a motion to adjourn is always in order; but under the rule of 1890, which is still substantially in force, the speaker may refuse to entertain a motion to adjourn, if a similar motion has recently been made and lost. If, however, one fifth of the members present are determined upon it, and will call for the yeas and nays, they may insist on their constitutional right to a roll-call every time any proposition comes to a vote; and thus may compel the other four fifths to answer to their names five, ten, or twenty dreary times.

117. Amendments of Measures, and Votes.

The fundamental right of deliberative bodies is not only to discuss, but also to alter, propositions before them; hence every bill brought before Congress is subject to changes which perhaps may totally alter its character. Under the rules of

the House, no amendment can be offered that is not "germane" to the subject of the bill. This limitation is intended to prevent the grafting of one proposition upon a very different one; it was introduced to prevent the system of legislative "riders," — that is, of adding to a bill clauses which could not pass on their merits, expecting the other house and the president to let them go rather than to defeat the whole measure.

On great bills, like an Interstate Commerce Act or a Tariff Act, hundreds of amendments may be filed. A bill is frequently recommitted, so that the committee may incorporate such amendments as it favors; or, in order to meet objections, amendments are prepared in the committee and reported by the chairman. It is a duty of party management to prevent a part of the majority from joining with the minority in an important amendment; for it is evident that such a practice would quickly destroy party cohesion; hence members who really desire changes in a bill try to bring them about by remonstrating with those who have the bill in charge. The tariff bills of late years have gone through the House in almost exactly the form in which they were reported, parliamentary devices being found for shutting off the amendments not accepted by the committee in charge. A favorite method of defeating bills is to move at the last moment to strike out the enacting clauses, a motion which, if carried, stops debate and ends the subject.

Votes in Congress are taken in four ways: — (1) By the "ayes and noes," the presiding officer deciding according to the sound of the voices. This is convenient for ordinary questions, where the vote is not very close. (2) If anybody doubts the vote, there is a "division": those in favor rise and are counted, and then those opposed rise and are counted. (3) In vote by "tellers" those on the affirmative and those on the negative each file between two tellers, who count the numbers. The advantage of this system is that it gives time to call up members from the lobby and committee rooms. (4) More formal is vote by "yeas and nays," in which the clerk calls the roll and each member as his name is called an-

swers "aye" or "no." The importance of the yeas and nays is that they are recorded in the journals, and are always open to the inspection of constituents.

Under the rules of the House and Senate, no bill can be passed unless it has been read three times on different days; but there are two methods of expediting business. (1) The rules may be suspended by a two-thirds vote, so that the bill may go through its various stages in a single day. (2) Almost anything can be done if nobody objects: a very large part of the routine business in both houses is actually performed while there is no quorum in the hall, and this goes on till the point of no quorum is raised. In 1895, for instance, a bill was introduced in the House of Representatives, and passed through all its stages in a few minutes, appropriating $50,000 for the Venezuela Commission, no member thinking it advisable to lodge an objection. So well understood is this practice that a few years ago, when two members of the House agreed that they would object to everything until certain concessions were made to them, they actually compelled the speaker and all the other members of Congress to placate them.

A bill which has passed one house is then "engrossed," — that is, drawn up in fair copy with all the adopted amendments inserted; but in order to become law it must be absolutely agreed to by the other house, without the difference of a word or a comma; and each house is free to amend the bills of the other. How shall the two houses be brought together? Sending the bills back and forth is a tedious process, and is apt to increase the trouble. The ordinary solution is to appoint a committee of conference, composed of members of both houses, who try to find a middle ground. One side gives way on some of its amendments, the other side on some of its claims; and if an agreement be reached it is reported to both houses. There is usually little debate on conference reports; if either house is still dissatisfied, it refuses to accede and demands a new conference. Technically, the conference committees may only consider the two forms of the bill as they come from the

two houses; actually, they frequently make up a bill including clauses which have been accepted by neither house. Thus, the tariff act of 1883 was practically framed by the conference committee.

When the two houses come to an understanding, an "enrolled" copy of the bill is prepared and signed by the speaker of the House and the president of the Senate; and it then goes to the president.

The system of the steering committee tends to harmonize the two houses, by introducing bills which it is known beforehand will be accepted in both; but it also tends to take away the feeling of individual responsibility, and to prevent either house from a fair attempt to draw up a satisfactory bill by the old-fashioned process of trying various amendments until the bill reflects the majority opinion. On all large questions there is time enough for debate, or would be if the houses did not spend so much time on private bills. The main reason for a lack of thoroughness in the House, and to a great degree in the Senate, is that both have too much petty business in hand to do the great business properly.

118. The Presidential Veto.

A joint vote of both houses of Congress does not make a statute, for the president must still be consulted as part of the legislative power. When a bill is sent to the president, he may do one of four things: — (1) He may sign it, whereupon it forthwith becomes law; and this is what happens to most bills. (2) He may simply leave it unsigned, and at the end of ten days, if Congress has not meanwhile adjourned, it becomes law and is entered in the statute-book accordingly. (3) He may veto the bill, and send it back to the house in which it originated, with his written reasons against it. (4) By the so-called "pocket veto," the president refuses to sign a bill sent within ten days before adjournment, and at the next session of Congress sends in a statement of his reasons for refusing. A fifth method — the approval of a bill by the president after

Congress has adjourned — was used once by President Lincoln, and is common enough in the states; but it is now an unwritten principle that all congressional bills still unsigned at adjournment are dead.

The presidential veto has been exercised nearly 450 times in the history of the government. The only presidents who lived through their terms without using this power were John Adams, Jefferson, and John Quincy Adams. The first president to make a systematic use of the veto was Jackson, who vetoed 12 bills. President Johnson vetoed 21 bills, nearly all of which were carried over his veto by the constitutional two-thirds majority. President Grant fearlessly used his veto 43 times. President Cleveland in his first administration sent in 301 vetoes, nearly all of them of pension, relief, and public-building bills, almost none of which were passed over his veto.

The president's veto is simply suspensive: a vetoed measure is again submitted to a vote, just as it stands, and if it then receives a two-thirds majority in both houses it becomes a law. Outside of Jackson's and Johnson's administrations, however, only half a dozen measures have ever been passed over the president's veto, so that it is almost as effective as if absolute. Indeed, the fear of the presidential veto frequently causes bills to be modified to meet supposed objections; on the other hand, measures are sometimes allowed to pass both houses in the expectation that the president will have the courage to veto them.

The president's veto power is undoubtedly salutary, both because it is an additional check on ill-considered legislation, and because the president keeps in mind the treaty obligations of the government: for example, in 1879, President Hayes successfully vetoed a bill restricting Chinese immigration, and set on foot negotiations to make such a bill possible without violation of our pledges. The president also protects his own prerogative by his veto power: thus, in 1876 President Grant vetoed a bill discontinuing certain diplomatic offices, for he argued that only the executive could designate public ministers. The president habitually consults with members of

his cabinet on bills which affect their offices: for instance, in 1882 President Arthur vetoed a river-and-harbor bill on the advice of Robert Lincoln, secretary of war, under whom the money was to be spent. The main defect in the federal veto power is that the president has no power to disallow separate items in an appropriation bill, a power possessed and exercised by many state governors.

119. Output of National Legislation.

The number of actual statutes which went through all the forms in the first Congress (1789–1791) was 115; in the fifty-sixth Congress (1899–1901), 1,881. This large increase is due in part to the expansion of the country in territory and in population; in part to the enormous material growth of the country, bringing in new subjects for legislation, such as railroads, steamships, and telegraphs; in part to the congressional habit of constantly making small amendments to preëxisting laws; but above all to the great number of private and petty bills passed by Congress. Of the 1,881 statutes put on the statute-book from 1899 to 1901, 1,498 are classified in the statutes as "private," 211 more are appropriation or other bills temporary in their nature, leaving only 172 measures which concern the permanent public service or interests.

Startling as is this legislative output, it represents only a fraction of the measures introduced into Congress. In 1899–1901, 6,236 Senate bills and resolutions and 14,657 House bills and resolutions were actually presented and pigeon-holed somewhere in the Capitol. Less than one bill in ten gets through at all; and of the public measures, most are so mauled in debate, and in the passage through conference, that they are very unlike the original propositions. The public statutes accumulate so fast that in 1878 Congress enacted the "Revised Statutes," a codification of the laws then standing on the statute-book, leaving out temporary, expired, and repealed laws. It is now time to incorporate with that work the permanent laws of the last twenty-five years.

The reason for the private bill is that occasional cases occur which are not sufficiently provided for by the general laws. A claimant for a pension, for instance, lacks some element of the necessary legal proof, although otherwise he possesses a good case; this may be a reasonable subject for a private bill, yet Congress is a very unfit body to examine such small questions. Private bills are really introduced by members as a favor or a justice to their constituents, and they require much personal attention in order to prevent the professional objector or the speaker from ruling them out. Until about 1854 Congress was plagued by private bills for the advantage of claimants under contracts; in that year it created a Court of Claims, which makes a judicial examination of such matters and reports its findings to Congress. Some such tribunal ought to be erected for most of the matters which now come within the private bills.

In this review of the legislative department and its work, it has been necessary to direct attention to practices which impede good legislation. Criticism, however deserved, must not obscure the larger truth that Congress does fairly reflect the public opinion of the country at large, though somewhat slow to respond to changes of popular desire. The chief defects of Congress arise from the great number of members and from the great mass of business. The committee system, with all its drawbacks, disposes of and kills off many undesirable measures. The gradual establishment of the power and responsibility of the speaker, and the unwritten influence of the steering committee, make the House still a legislative body; and the House and Senate are kept in reasonable adjustment with each other. Congress is a more efficient body than almost any state legislature, is less subject to personal influences, and is less controlled by a few political leaders acting for personal ends. The main trouble in Congress is lack of time, and that is due partly to private-bill legislation, and partly to the pressure on the time of members to obtain office for constituents and supporters.

CHAPTER XV.

THE PRESIDENT.

120. References.

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121. History of the Presidency.

That one person should stand at the head of the state is natural in a monarchical government, and has often been the practice of republics; but it is not the only or the obvious method. The Federal Convention found it a difficult matter to provide a single-headed executive which should be free from control by Congress. For weeks the idea of an executive council was discussed; then the Convention declared for an election by Congress; and at last it decided for a single executive, chosen by indirect popular election.

The presidency has in a century changed from what the Convention had in mind. The growth of the republic has thrown new responsibility upon the president; the cabinet has grown up, and has gained strength as time went on; and, in passing from individual to individual, the traditions of the presidency have been well transmitted and often expanded.

From 1789 to 1903 there have been twenty-five presidents of the United States, most of whom have set an impress upon the office. Washington, from 1789 to 1797, made the first series of appointments, established the first relations with Congress, inaugurated a foreign policy, and began the use of the veto power. Such was the popular confidence in the president that he carried through nearly every policy which he publicly advocated; and, although bitterly maligned by the opposition press, he retained the love and confidence of the country to the end of his administration. John Adams, from 1797 to 1801, was a party president, at odds with the opposition and engaged in quarrels with a large faction of his own party. He added little to the president's power, except that he dismissed a member of the cabinet outright and thus created a valuable precedent.

Jefferson's presidency, from 1801 to 1809, had an unexpected effect on the development of the office. Jefferson believed in reducing federal powers to the lowest point possible, and he naturally favored legislative authority as opposed

to one-man power. Yet no president from that day to this has ever had such unquestioned influence over Congress: in both foreign and domestic affairs he asserted the primacy of the president. Madison and Monroe were both men of less dominant temperament; and John Quincy Adams was so hampered by the refusal of Congress to accept any policy which he ardently advocated, that the power of his office declined in spite of all his efforts.

The diminishing of the prestige of the presidency was checked by the next president, Andrew Jackson, from 1829 to 1837. Jackson broke loose, was the first president to employ his veto power frequently and with determination, and ended by converting a hostile majority in both houses into a party majority in his favor.

Van Buren, Harrison, and Tyler added nothing to the power of the president, and Tyler weakened it by dissensions with Congress. Polk, however, from 1845 to 1849, was one of the most forceful of all American presidents, and the first to show the immense power which may be exercised by the president in time of war. His successors, Taylor, Fillmore, Pierce, and Buchanan, raised neither the prestige nor the power of the presidency. Pierce was the weakest of all the American presidents, and much under the influence of his cabinet officers; and Buchanan at the end of his administration became involved in the secession controversy, in which both sides thought he showed weakness and indecision.

The greatest of American presidents was Lincoln, who came to the office less experienced in public affairs than any predecessor. His success in trying circumstances is the proof of his genius. He made head against Congress at a time when that body was seizing new powers; and above all presidents he secured the confidence of the people. He raised the presidency to its highest point of power and responsibility, and was allowed so to raise it because people knew that he would give up his war powers when the war ended.

Andrew Johnson inherited all the difficulties of the Civil

War without any of Lincoln's gifts. The House of Representatives demanded his impeachment, and the Senate lacked but one vote of the two thirds necessary to remove him from office, and thus to make the presidency forever dependent on Congress. General Grant, from 1869 to 1877, was a better president than either his friends or his enemies realized. He was the first president to take interest in the improvement of the national civil service, and he used his veto oftener than any president who had preceded him.

President Hayes, by his veto of appropriation bills bearing riders, nearly broke up the practice of riders. President Garfield died in the midst of a contest for the dignity of his office. Under President Arthur an efficient civil service act was put into execution. President Cleveland, from 1885 to 1889, and again from 1893 to 1897, showed a strong determination to preserve the accumulated prerogatives of the presidency; he vetoed a large number of private bills, and continued President Arthur's policy of slowly improving the civil service. President Harrison, from 1889 to 1893, was out of touch with Congress, and could not add to the power of his office.

President McKinley, from 1897 to 1901, was more like Jefferson than any other president, in his quiet control over Congress and his dealing with out-lying possessions. At the time of his death, on September 14, he was one of the strongest and most powerful presidents that had ever occupied the White House. President Roosevelt has a popular support and confidence granted to few of his predecessors.

122. The Choice of the President.

In the Federal Convention, many suggestions were made as to the election of the president, — that he should be chosen by Congress, by the people at large, by the Senate, by electors. Eventually the last of these methods, although almost unknown in the states, was chosen, because every other method was more inconvenient. By a direct popular election, large majorities concentrated in a few states might bring in a president

who was unpopular in most of the country; and election by Congress would almost certainly mean such previous pledges by the successful candidate as would leave him at the mercy of the legislative department.

The method of choice by electors has some difficulties. How shall electors be chosen? The constitution provides simply "that each state shall appoint in such manner as the legislature thereof may direct" its quota of electors. For many years electors in some states were chosen by the legislature, — as late as 1876 by the legislature of Colorado; but ever since 1792 it was more common to choose them by popular vote. Shall they be chosen by districts, like members of Congress? This was the practice in Maryland for many years, and was tried in Michigan in 1892. The method at present, however, is that all the electors from a particular state shall be chosen together by one plurality. Hence in the election of 1884, by a majority of about 1,000, the thirty-six electoral votes in New York were cast for Mr. Cleveland, and thereby Mr. Blaine was defeated for president.

The voters in presidential elections are the same as the voters for the more numerous branch of the state legislature. From 1870 to 1894 there was a system of protecting the polls by federal inspectors; at present the conduct of presidential elections is left wholly to the state authorities. In early times the choice of electors did not necessarily come on the same day throughout the country, but in 1845 Congress prescribed the Tuesday after the first Monday in November. It is a day of great excitement, and few elections call out such a large proportion of the voters. The machinery for reporting the count is now so nearly perfect that within five or six hours after the polls have closed the result of the contest is usually known throughout the country.

Strictly speaking, there is no election in November, — only a choice of a certain number of persons in each state who are empowered to elect a president. The original thought was that the electors would act irrespective of party: but in the

third election, of 1796, it was understood beforehand that the Federalist electors would vote for Adams and the Republican-Democratic electors for Jefferson; and in the twenty-six presidential elections since that time there is no case of an elector who has cast his ballot in opposition to the expectation of those who voted for him. The electors, therefore, are really so many counters, — three for Delaware, thirty-nine for New York, and so on.

The indirect system is intended to avoid a danger. Each state has as many electors as it has senators and representatives, and hence no president can be chosen who has not friends and supporters in about half the states in the Union: there cannot be such a thing as a New England president, or a Middle-state president, or a Southern president, or a Western president. Furthermore, the system avoids a great temptation to electoral frauds in the strong party states. In the election of 1900, Pennsylvania had 252,000 majority for McKinley, and Texas 121,000 majority for Bryan. Those returns might have been raised to almost any figure, if more votes could have designated more electors; but no manipulation could carry more than 32 electors for Pennsylvania, and 15 electors for Texas.

(1) These so-called "electoral colleges," chosen in November, meet, one in each state, on the second Monday in January, cast their ballots, and despatch certified copies of the returns to Washington; on the second Wednesday in February Congress meets to count the votes. The constitution provides only that the "votes shall then be counted." In 1877, when the electoral result was very close, the question whether the vote was to be counted by the Senate officers, or by joint agreement of the two houses, was all-important. Four states each sent in two rival returns. The majority of the House was Democratic and favored one set of returns, and the majority of the Senate was Republican and favored the other; whereupon the controversy became so bitter that a special act of Congress was passed creating an electoral commission (un-

known to the constitution) of five senators, five members of the House, and five justices of the Supreme Court. In this commission of fifteen, by a vote of 8 to 7, the Republican return from each of the four states was received; and Mr. Hayes was declared elected by 185 to 184 electoral votes. In 1887, to prevent such controversy, Congress passed an act for the count of the electoral votes, of which the principle is that, if there is only one return from a state, it is to be received unless the two houses unite in throwing it out; if there are two sets of returns, that one is to be received which has the certificate of a state tribunal appointed to canvass the vote, — that is, it is left to state authority to decide whether the electoral votes are cast by the electors who have been duly chosen.

(2) If there is no majority of all the electoral votes, the president is elected by another method: the constitution provides that the House of Representatives shall elect one from the three highest on the list, the majority of members from each state taken together casting one vote. Only twice has this method been used, and both times it has led to serious trouble. In the election of 1800, the Republican-Democrats intended that Jefferson should lead, and that Burr with the next highest vote should become vice-president; each, however, had 73 votes, and there was no constitutional election. With difficulty Jefferson was at last elected by the House in 1801. Under the twelfth constitutional amendment (which was at once introduced, and in 1804 became part of the constitution), the president and vice-president are now voted for separately, and such a deadlock cannot be repeated. The other House election was in 1824, when out of the three candidates — Jackson, Adams, and Crawford — John Quincy Adams was chosen by the House, voting by states.

(3) A third method of becoming president is through the death or inability of the president, when constitutionally the vice-president assumes the office. Five times has this unhappy contingency come to pass. By the death of Harrison, April 4,

1841, John Tyler became president; by the death of Taylor, July 9, 1850, Millard Fillmore became president; by the assassination and death of Lincoln, April 15, 1865, of Garfield, September 19, 1881, and of McKinley, September 14, 1901, Andrew Johnson, Chester A. Arthur, and Theodore Roosevelt respectively became presidents. Under constitutional authority to provide for the succession in case of the death or inability of both president and vice-president, in 1792 Congress enacted that the president pro-tem of the Senate should be next in succession, and after him the speaker of the House, a new election to follow within two months. January 19, 1886, Congress passed a much better law, which provides that the succession after the vice-president shall be secretary of state, secretary of the treasury, secretary of war, attorney-general, postmaster-general, secretary of the navy, and secretary of the interior. This makes in all nine persons, and it is hardly conceivable that every one of these nine should die or become disabled at the same time. There is no provision in this statute for a new election, and hence a president who thus gets into office serves out the remainder of the term.

The term of the president begins at noon on the fourth of March, and runs for four years. Washington was reëlected, and might have had a third term; and every president thereafter until 1841 was a candidate for reëlection: John Adams, John Quincy Adams, and Van Buren were defeated; Jefferson, Madison, Monroe, and Jackson were elected. From 1841 to 1861 no president was renominated.

From 1861 to 1901 there were four cases of double terms, — Lincoln, Grant, Cleveland, and McKinley. Lincoln died at the beginning of his second term; Cleveland was renominated and defeated in 1888, again nominated and elected in 1892; Harrison was renominated in 1892, but lost the election. In general, a president of great force of character desires a renomination and is likely to get it. Jefferson, like Washington, retired at the end of a second term, and thereby set a precedent which has ever since been fol-

lowed. An effort was made to renominate Grant for a third term in 1880, four years after the end of his second term, but it failed; and the country is now absolutely set against third presidential terms under any circumstances.

The president and vice-president are the only officers of the United States who must be native-born citizens; they must also be thirty-five years of age, and must have resided fourteen years in the country. The unwritten qualifications are not so precise. With very few exceptions, the presidents have been men of long public service and high national reputation: John Adams and Jefferson had been vice-presidents; Jefferson, Madison, Monroe, and John Quincy Adams had all been secretaries of state; Jackson, William H. Harrison, and Grant got their reputation chiefly through their military service; Van Buren and Buchanan had served as senators and as secretaries of state; Polk had been speaker of the House and governor of Tennessee; Presidents Hayes and Cleveland got their reputations principally as governors of close states; Garfield and McKinley had had long and honorable experience in the House of Representatives, in which Pierce also had seen service; Lincoln had served a term in the House, but had made no reputation there, and owed his nomination to his joint debates with Stephen A. Douglas. Of the vice-presidents who have succeeded to the presidency, Tyler had been senator from Virginia, Johnson military governor of Tennessee, Fillmore had been in Congress, and Arthur had had experience in minor executive federal offices only. President Roosevelt had been civil service commissioner, assistant secretary of the navy, and governor of New York.

In general, the road to the presidency is through long public service, both because that inspires public confidence and because it makes a candidate widely acquainted. Most presidents are good public speakers; no man has ever been elected against whom there was any suspicion of integrity; and with few exceptions the presidents have shown themselves men of high public spirit.

123. The President's Life in Washington.

After the November election, it is customary for the successful candidate to remain quietly at home; he confers with members of his party, makes up his cabinet list, and decides on appointments. In February he commonly goes to Washington; Lincoln on his way thither, in 1861, made a series of public speeches intended to reassure the country. The few days or weeks before inauguration are occupied chiefly with office-seekers and the preparation of the inaugural address. On March 4 the outgoing president escorts his successor to the Capitol, where the new president takes oath to the constitution and makes his address. He then calls a special session of the Senate, and begins his administration.

In Washington the president lives in the White House, a stately building beautifully situated on a rise which sweeps down to the Potomac flats, with superb drawing-rooms used for the entertainment of visitors. Every president from John Adams has made it his residence in Washington. In 1902 a separate building was constructed for the executive offices, and the White House was restored and made a convenient family and official residence.

The etiquette of the presidential office is simple: it is not expected that other people will sit while the president is standing, or talk when he has something to say; but that is about all. Nearly all presidents are free of access: any well-conducted and clean person who can show the doorkeepers that he has some actual business with the president may enter; and if he has introductions from some responsible person, or can make his business clear enough to a secretary, the president will receive him. Large numbers of people, including whole visiting societies or their delegations, go to pay their respects at the White House. Members of the cabinet have the *entrée* of the president's office at all times, and many senators and members of the House have an equally undisturbed privilege

of access for themselves and their constituents and friends. Indeed, presidents sometimes find it hard to get their meals because of the pressure of callers.

The first two presidents set up a formal system of receptions and levees; but Jefferson inaugurated what he called "republican simplicity," which reached such a point that he received the minister of Great Britain, when he came to make an official visit, by opening the door himself, wearing brown stockings not entirely clean, and slippers down at the heel. Since his time most presidents have kept up a dignified social life. Family and personal friends who visit Washington are often invited informally to the family meals; and there are numerous state dinners at which the guests are foreign diplomats, members of the Senate and the House, and civil, military, and judicial officers. Presidents rarely make visits or calls in Washington; but an invitation to the White House always supersedes any other engagement.

Most presidents go away from Washington for a part of the summer; and since the time of Washington they have been in the habit of making long journeys to distant parts of the Union, often speaking freely to great numbers of people on the way. President Jackson came to New England in 1833, and was received with enthusiasm. The long trips give one of the best opportunities for people to get acquainted with the president. From time to time he holds a public levee at the White House, to which respectable people are freely admitted; and it is an absurd and fatiguing custom that he must shake hands with each of these visitors.

From 1789 to 1800 the president made a formal speech at the opening of Congress; but now he never officially communicates with Congress in any other way than by a written message. The correspondents of the great newspapers come daily to the White House, and a secretary gives them any information which the president desires to have circulated; and in addition they put into their despatches what they learn from senators, cabinet officers, and other public men.

It is the policy of most presidents to keep the public informed; in fact, most acts of the president, outside of diplomacy, are necessarily known to so many executive officials that they could not be kept secret if it were so desired.

With his cabinet a wise president is in constant communication, for they are the feelers through which he realizes public opinion; he also confers with the public men in his own party, and often with the opposition: from day to day he is holding council with dozens of people in and out of public life. He is the recipient of correspondence, often reaching a thousand letters a day, from people known and unknown to him. Countless gifts pour into the White House from all over the country, most of which have to be declined. The president has a force of stenographers and clerks, and an official private secretary, whose office is practically that of personal and confidential adviser.

124. Functions of the President.

The duties and privileges of the president are stated in general terms in the constitution. He receives a compensation fixed by Congress: the first salary act of 1790 made the salary of the president $25,000 a year, a sum far larger than any annual amount then paid by individuals or corporations; in 1871 the salary was raised to $50,000 a year, which is barely adequate for the dignified maintenance of the office. In addition, Congress appropriates for the care and repair of the executive mansion, — for lights, stable, hot-house, fuel, and steward's salary. If the president wishes to make a trip by sea, a government vessel is placed at his disposal; but the supplies and servants, both for the White House and for such excursions, are paid for out of the president's income.

The powers of the president will appear in detail in the discussion of the functions of government. They may be briefly summarized as follows: — As commander-in-chief of the army and navy, he has large authority in time of peace, for he appoints, commissions, and assigns officers; and in

time of war he is the military chief. By his general appointing power he designates foreign ministers and consuls, judges of the Supreme Court, and all other important officers. This power, combined with the power of removal, which does not require consent of the Senate, centralizes and unifies the whole hierarchy of executive officers. The president's power over ordinary legislation has already been discussed; in addition he directs foreign relations, and submits treaties for ratification. In judicial matters the president has the power to pardon any offences, except in cases of impeachment. One of the most important functions of the president is to "take care that the laws be faithfully executed." Under this power he has general oversight over the whole executive service; through the attorney-general's office he also keeps watch of the courts; and in case the execution of the laws is obstructed by mobs, riots, or insurrections, he may use the militia or regular military and naval forces to maintain the supremacy of the law. He may also call the attention of Congress to laws which are inadequate for their purposes.

125. Presidential Appointing Power.

Manifestly, the president must exercise many of his functions through other executive officers of the government, and the selection of them is one of his most important functions. In 1787 the states committed such appointments chiefly to the legislatures; it is therefore remarkable that in the Federal Convention the power of appointment was given to the president, with the confirmation of the Senate.

In order to make a valid appointment, there must first of all be an office to fill; and the existence, title, and salary of the office are settled by Congress, — the term also, except in the case of judges and military and naval officers. The single exception is that the president may appoint commissioners to get information for him, especially on diplomatic subjects; but in such cases no salary can be paid without the authority of Congress.

The next step is for the president to designate some person to fill the office, which he does ordinarily by a special message to the Senate, giving the name of the man and of the state from which he comes, and the cause of the vacancy. The appointment is usually referred to a committee, which is often slow in acting, but in due time reports either for or against confirmation. The matter is then brought before the Senate in secret session, and a vote is taken, often after discussion; if a majority of the members voting are in favor, the appointment is then completed. The president, however, has still to issue the commission, and if he refuses to do so it is practically an annulment of the appointment.

The Senate has repeatedly attempted to get from the president written information before confirming nominations, and several presidents — among them Jackson and Cleveland — have roundly refused to submit papers for that purpose. In practice, many nominations fail of confirmation: in Jackson's administration one nomination had no votes in favor, and 46 votes against it; Tyler sent in the nomination of Caleb Cushing as secretary of the treasury three times in two days, and confirmation was refused each time.

The practice called "senatorial courtesy" greatly affects confirmation. It has two meanings: (1) that a senator or an ex-senator will be confirmed without question; (2) that important appointments to federal office within a state will not be confirmed against the objection of the senators from that state, if of the same political party as the president. This often means that the president must nominate a man designated beforehand by a senator, or declared by him to be acceptable.

To the process of confirmation there are two exceptions. (1) If the Senate is not in session, the president has the constitutional power to make temporary appointments, to cease at the end of the next session of the Senate if not confirmed by that body. It is of course possible, but unusual, for the president to reappoint the same man the moment the Senate adjourns. (2) Congress has constitutional power to authorize the

president to make certain appointments without confirmation by the Senate, — for instance, that of the librarian of Congress.

Many influences are brought to bear upon the president. (1) He uses his own personal knowledge of men, so far as it goes. Washington, for instance, knew all the military, and most of the civil, officers of the Revolution, and was therefore able to make intelligent appointments. (2) Even Washington, however, was from the first obliged to depend, for his knowledge of the character and capacity of candidates, upon the information of other people, especially upon that of members of the House and Senate who were at the seat of government and at the same time in touch with their constituents. (3) Senators and representatives of the same party as the president become the natural distributors of the patronage; and, so long as the president insists that the persons so suggested shall be men of character and fitness, this method does not work ill. (4) If the members of Congress from a state or a district are among the political opponents of the president, somebody else — a former member of Congress, or a leading politician — is recognized as the person whose recommendation receives most attention. (5) The president is subject to strong pressure from candidates and the friends of candidates, who write letters and send delegations. He receives the papers and takes them into consideration.

Since Congress is a body containing many distinguished men, it is natural that members should often be selected for executive offices. There is a constitutional provision that no senator or representative shall, during the time for which he is elected, be appointed to any office which has been created, or the emoluments increased, during such time; and that no person holding office under the United States shall be a member of either house. This provision absolutely prevents anything like the parliamentary system, under which the great executive officers are also habitually members of one or the other house. Whenever a member of Congress is appointed to office, his

acceptance is considered a resignation of his place in Congress. In about thirty cases, senators have resigned to accept cabinet offices.

A similar, though unwritten, limitation is that no person holding any significant state office shall also hold a federal office. This again is different from the principle of the European federations: the parliamentary ministers of the German states are often also members of the Bundesrath, the German body which corresponds to our senate.

126. Relations with Congress.

The right of the president to initiate legislation is one of great importance, because his annual and other important messages are printed throughout the country and concentrate public opinion upon the measures which he advocates. An example is President Cleveland's tariff message of 1887, which made the tariff an issue in the presidential election of 1888. The veto power gives to the president, upon its face, as much influence over legislation as one sixth of the members of each house have; and practically it gives him more than a sixth, because the veto attracts public attention.

The president has many indirect means of affecting legislation and legislators. (1) He is frequently a recognized party leader. Thomas Jefferson, Andrew Jackson, Grover Cleveland, and William McKinley are examples of presidents of this type. (2) Almost every president has powerful personal friends in both House and Senate, who are ready to defend his suggestions and to introduce bills and amendments which meet his views. (3) The patronage of the president gives him a great hold upon both houses; for, if he refuses to accept the names submitted to him by members of Congress, the latter lose reputation and political power in their own districts. Sometimes the patronage has been used to secure desirable measures. Thus, in December, 1864, President Lincoln made overtures to some of the members of Congress, and secured the necessary two-thirds vote for the pending Thirteenth Amendment.

In general, the president is more powerful in Congress than any other individual; but when a majority in one or both houses is opposed to him, his most unselfish measures are likely to be resisted for political reasons. President Madison found Congress intractable in 1809; John Quincy Adams's administration was almost paralyzed by determined opposition; from 1831 to 1835 Jackson was engaged in an almost continuous struggle with Congress; and Tyler came to an open breach with his Whig associates in Congress. Very frequently the party which elects the president loses control of the House in the middle of his term. Nevertheless, the president is so independent of Congress that in the long run he is likely to prevail in any controversy; Johnson was the only president to confront a working two-thirds majority in both houses which could override the president's vote and make him subject to whatever that two-thirds majority held to be constitutional. The truth is that the president is a personality and Congress is an organism, and popular interest and enthusiasm are much more likely to go to the personality.

127. Dignity of the Presidential Office.

The American presidency is praiseworthy for its simplicity. The president has no high-sounding title: it was indeed proposed to give Washington the title "His Highness, the President of the United States and Protector of their Liberties," and to put his head upon the coins; but the official title from that day to this has been simply "Mr. President." The president receives ambassadors, but he rarely converses with them upon diplomatic questions. He appoints thousands of officers, civil and military, and yet never wears a uniform even as the head of the army.

Nevertheless, the position of the president is one of great dignity and honor. Few public men have been free from the pleasing thought that the presidency might come to them. General William T. Sherman declared that he would not accept the office if elected, for a man who had commanded a hun-

dred thousand men in the field had no need of the presidency; but Henry Clay, Daniel Webster, Stephen A. Douglas, James G. Blaine, Thomas B. Reed, and many other great men have gone to their graves in disappointment at missing the great reward. The president is the head of the nation: to him are addressed invitations from foreign governments to participate in international congresses and in national festivities; to him come official visitors from abroad, such as Prince Henry of Prussia, and a delegation of French notabilities in 1902; wherever he goes he is received with respect and honor, irrespective of party. The dignity adheres to a president after his retirement from office: General Grant, for instance, in 1877 made a journey round the world, and was everywhere received with a distinction usually reserved for titled sovereigns.

Other republics have presidents, notably Switzerland and France: the Swiss president, however, is only chairman of an executive board; the French president is only a figurehead, having little actual authority. The president of the United States is the responsible head and director of three great national services: he appoints, instructs, and may recall all our foreign representatives; he appoints, commands, and may dismiss all military and naval officers; he appoints and directly or indirectly controls all the civil officers of the government, down to the postmen and the clerks in custom-houses. No president has power to carry the country far beyond its own purposes, either for good or ill; but every president has power swiftly and efficiently to apply a freshly-formed public opinion, and he is much less affected by local currents of influence than is Congress. For instance, in the long discussion over coinage and currency, from 1878 to 1898, the presidents frequently vetoed acts of Congress; and finally the majority proved to be on their side. The president is not only the official head of the government, and the most distinguished personage; he is on the whole the most powerful single factor in American government.

CHAPTER XVI.

NATIONAL CIVIL SERVICE.

128. References.

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129. Heads of Departments.

The president not only acts by his own words and deeds; he is also the head of the largest body of persons employed under one general direction within the United States. The total number of members of the House and Senate, with all the officials of both houses, is only 1,600; the United States judges, clerks, marshals, deputies, and other judicial officers are only about 2,250. There are, however, 236,000 federal executive officials and employees, divided like an army into various grades of officers and privates.

Highest of all are the nine heads of departments, commonly called members of the cabinet. The constitution simply authorizes the president to "require the opinion in writing of the principal officers in each of the executive departments," and authorizes Congress to vest the appointment of inferior officers "in the heads of departments." It was understood that there were to be such offices as had been constituted by the old Congress in 1780 and 1781; but all the details were left for later legislation. Accordingly, in the course of a century nine cabinet offices have been created and their duties defined.

In the early statutes for organizing these offices, the precedents of the Confederation were first followed by establishing Departments of Foreign Affairs, Treasury, and War. In the act of 1789 for creating a judiciary, there was also a clause providing an attorney-general; but not till 1870 was the formal Department of Justice organized, of which he is the head. The Navy Department was subdivided from the War Department in 1798, at the beginning of a naval war with France. There was a postmaster-general under the Confederation, and also under the federal government from 1790; but it was not till Jackson's administration that the president recognized him as equal to the secretaries. In 1849 various functions were withdrawn from the other departments to create a Department of the Interior. In 1889 the previous Bureau of Agriculture was raised to a department with a secretary. In 1903 a ninth subdivision, a Department of Commerce, was organized by act of Congress. All the heads of departments are appointed by the president, subject to confirmation by the Senate. For many years the salaries of the officers were meagre; each member of the cabinet now receives $8,000 a year.

Most of the great functions of government are assigned to one or the other of these departments. (1) The secretary of state is in charge of foreign representatives and negotiations, and holds interviews and correspondence with resident ministers from foreign countries. (2) The secretary of the treasury has the most laborious and the most responsible office: he is in charge of the public accounts, and of the collection, safe-keeping, and payment of the public money. (3) The secretary of war is, under the president, the head of the army and of the various clerical offices connected with the army; James Monroe in the War of 1812, and Edwin M. Stanton in the Civil War, acquired great reputation by their performance of these duties. (4) The attorney-general is the legal adviser of the president and heads of departments, and is also the prosecuting officer for the federal government,

and represents its interests as counsel. (5) The secretary of the navy has charge of the construction of ships and maintenance of the force, and gives orders to the officers. (6) The postmaster-general manages an important public service, and has by far the greatest patronage, since he appoints and commissions about 90,000 postmasters and postal clerks. (7) The secretary of the interior has charge of public lands, pensions, Indian affairs, patents, and other important subjects. (8) The secretary of agriculture supervises a variety of special services, such as the Bureau of Animal Industry, the Forestry Division, the Weather Bureau, and the experiment stations which are scattered through the states. (9) The secretary of commerce has charge of statistics and of corporation accounts.

A few other functions are given to bureaus or commissions which are not subordinate to any of the nine great departments. The Government Printing-Office is carried on by a public printer appointed directly by the president. In Washington and elsewhere the government maintains numerous scientific bureaus, especially the National Museum, the Bureau of Ethnology, and the Smithsonian Institution. Among the independent services are three offices which are almost the only examples of administration carried on by a national executive board: the Fish Commission, the Interstate Commerce Commission, and the Civil Service Commission. The Interstate Commerce Commission, created in 1887, is really an administrative court to decide questions of transportation. The Civil Service Commission, created in 1883, watches over the selection of about 120,000 subordinate employees, distributed among the various departments.

130. The Cabinet.

Inasmuch as the president exercises such large executive powers, it is remarkable that he was not surrounded by a council which should have some power to check him. In the Federal Convention various plans were made for a council

of state, or privy council; but all these provisions were dropped, perhaps because the Senate has a constitutional check upon treaties and appointments.

The nine heads of departments by their association in the cabinet act as one federal instrumentality and supply the place of a constitutional council. The name "cabinet," as employed in England and on the continent, means the parliamentary ministry. The American cabinet is wholly different:— (1) The members are appointed by the president and confirmed by the Senate, and are not really responsible to either house of Congress. (2) They are appointed singly; and if one is compelled by public sentiment to resign, the others remain. (3) The cabinet has no official relation to the preparation or passing of measures in Congress.

The American cabinet is simply composed of those heads of great executive offices whom the president chooses to invite to meet him from time to time in council. He may summon six and leave out the other three; or he may, like Jefferson, for many months hold no cabinet meetings at all. By tradition and practice, however, any man invited to accept a cabinet position understands that the president will make him one of a body of habitual advisers, and will usually consult him before taking any important step with relation to his department. Yet the president is not bound to ask or to take the advice of the cabinet on any public measure. For instance, in September, 1862, President Lincoln called his cabinet together and invited them to listen to the draft of his proposed proclamation of emancipation, clearly stating that he did not ask their approval, since he had made up his mind to issue it. It is believed that Franklin Pierce used to poll his cabinet and govern himself by the majority vote; but no other president has ever admitted that the majority, or the whole, of his cabinet could control his action.

In choosing his cabinet, the president looks first of all for strong men who fairly represent his party. Personal friendship often goes a long way in such selections: for instance, Jackson

appointed John H. Eaton, a man of little public experience, to be secretary of war. The president tries to represent the various geographical sections, and hence it is uncommon to select two cabinet members from the same state. He tries to recognize different wings of his party: thus, Lincoln appointed four old Democrats and three old Whigs to his cabinet in 1861; he said that there was a perfect balance, because he was the fourth old Whig.

In the act creating the secretary of state in 1789, by the tie vote of Vice-President Adams, a clause was introduced recognizing the right of the president to remove heads of departments without consulting the Senate. Except in two instances, the possession of the power has prevented the necessity for using it: John Adams removed Timothy Pickering, secretary of state, in 1800; and Jackson removed William J. Duane, secretary of the treasury, in 1833. Johnson suspended Edwin M. Stanton, and tried to remove him, in 1867; and William W. Belknap resigned in 1875 to avoid impeachment. In many cases, however, members of the cabinet have resigned because they could no longer agree with the president: thus, Lewis Cass withdrew in 1860 because he thought President Buchanan was not sufficiently active against secession.

If a president is reëlected, he commonly carries over the whole or a part of his previous cabinet, and sometimes a man has been retained even beyond eight years: William Wirt was attorney-general continuously from 1817 to 1829, and Albert Gallatin was secretary of the treasury for thirteen years, from 1801 to 1814. Nevertheless, cabinet changes are frequent: the only president who lived through his term without a change in his cabinet was Franklin Pierce. Frequently, in case of a vacancy, a man is moved from one place to another: thus, Richard Olney was made attorney-general in 1893 and secretary of state in 1895. The most remarkable case of resignation was that of five of the six members of the cabinet in September, 1841, as a protest against President John Tyler.

Inasmuch as the president selects his own secretaries and

has the power to dismiss them for reasons that seem good to him, he can secure harmony and coöperation. When, in 1833, Secretary Duane refused to remove the government deposits on the president's direction, Jackson forthwith removed him and appointed Taney, who took the required step. When, in 1886, it was found that Secretary Manning of the treasury was giving orders to capture Canadian sealing vessels on the high seas, and that Secretary of State Bayard was protesting against the capture of American fishermen, the president interposed and decided upon a single policy.

The president is dependent upon the secretaries for advice, for intimation as to the public feeling of the country, and for the actual performance of their duties in cheerful coöperation with himself. The cabinet is a kind of executive exchange, in which the members learn to know what is going on in the government; and the president's attitude is constantly affected by the opinion of his advisers, although he is under no constitutional obligation to take it. A new president, whether he comes in by election or by succession from the vice-presidency, is justified in changing his cabinet, and invariably does make changes sooner or later.

131. Presidential Removals.

The power of the president to remove at his discretion applies to all officers whom he appoints, except to United States judges, and to military and naval officers, who ordinarily have a right to a court martial. Constitutionally, the president appoints judges, foreign ministers and consuls, and all others except inferior officers; Congress decides where the line is drawn between higher and inferior. In 1896 there were 4,815 presidential executive officers confirmable by the Senate, all of whom were removable by the president at his discretion.

The debate on the power of removal in 1789 turned on the question whether the removal of officers is an incident of their appointment (in which case removal must be approved by the

Senate), or is a part of the president's general duty faithfully to execute the laws of the United States. The experience of the states, and especially of the cities, shows that it is contrary to the public interest to allow a state Senate or a board of aldermen to block removal, and that Congress decided wisely in accepting the second doctrine.

This important decision once made was adhered to for nearly eighty years. In 1867 the two-thirds majority of Congress passed over the president's veto a tenure-of-office bill, under which the consent of the Senate was practically required for the removal of cabinet ministers and other presidential appointees. President Johnson attempted to test the constitutionality of this statute by suspending Secretary Stanton. In 1869, when President Grant came in, the most important part of the act was repealed, and in 1885 the rest of it; so that the country has returned to the earlier practice.

At the beginning of the federal government it was not usual to define the terms of officials, except that marshals and district-attorneys were appointed for four years only. In 1820 Secretary Crawford of the treasury secured the passage of an act under which the terms of certain officials who handled public money were to be four years; and this principle has since been extended to most of the important federal officials, including the chiefs of many bureaus, the governors and judges of territories, Indian agents, collectors and surveyors of the customs, pension agents, and especially postmasters having salaries of $1,000 or upwards.

The result is that the commissions of nearly all the important officers of government expire at some time within the four years' term of any president, without raising the issue of removal. Although the cabinet officers and some other important officials are appointed without limit of term, they are precisely the officers who are necessarily changed when a new president comes in: hence, four years is considered the normal term for federal office; one reappointment is unusual, a second reappointment very rare. In this respect our system

is entirely different from that of most other civilized countries, in which such appointments are commonly made for good behavior.

Yet the power to remove is absolutely necessary for efficient government. The national government is responsible for defence, for international relations, postal intercourse, and many other functions in which unity and persistency of policy are necessary. Unfortunately, this salutary power, used during forty years for the benefit of good administration, soon after 1829 became one means of demoralizing the public service and discouraging capable defence. The following table (prepared by Professor C. R. Fish) well illustrates this subject. The figures are for civil officers only, military and naval removals having been left out of account.

	(1) Express "removals."	(2) Name of last occupant mentioned by president, but not cause of vacancy.	(3) Failure to reappoint.	(4) Appointment vice non-acting appointee.	(5) Appointment vice temporary appointee.	(6) Commissioned during the recess.	(7) "Midnight" appointments.	(8) Total presumptive removals.	(9) Probable number of presidential officers.
Washington	13	4	..	..	..	..	..	17	..
John Adams	14	5	2	..	..	..	..	21	..
Jefferson	48	11	8	2	..	..	40	109	433
Madison	4	20	2	1	..	..	..	27	824
Monroe	17	10	..	..	..	..	..	27	..
J. Q. Adams	5	2	4	1	..	..	..	12	..
Jackson	164	26	58	9	5	..	..	252	610
Van Buren	26	17	30	6	1	..	..	80	924
Harrison and Tyler	375	15	60	5	3	..	..	458	..
Polk	225	3	108	6	..	..	..	342	..
Taylor	44	17	43	8	..	428	..	540	929
Fillmore	45	5	13	2	..	23	..	88	..
Pierce	676	75	38	12	..	22	..	823	..
Buchanan	197	14	203	1	1	42	..	458	1520
Lincoln	862	25	46	11	..	513	..	1457	..
Johnson	455	200	142	25	10	71	..	903	2669
Total	3169	445	762	89	20	1089	40	5614	..

It will be seen that the largest number of removals in proportion to presidential offices was during Lincoln's administration, a time of confusion and national danger; but almost every president, by removal or by expiration of commission, changes at least seven tenths of the presidential officers, even though the preceding president was of the same party. Such a state of things cannot be reached by act of Congress, for the president is not subject to legislative control in the exercise of either his appointing or his removing power. Congress cannot in any way designate the person who is to fill an office: in 1884, when a bill was passed authorizing the president to appoint Fitz-John Porter colonel in the regular army, the president vetoed it on the ground that Congress was not competent to confer such authority. In 1864, however, Congress established a class of consular clerks, with the provision that, if the president removed them, he must state the reasons for removal; and no president apparently has protested. On the other hand, presidents have repeatedly refused to submit papers to the Senate bearing upon the removal of officers.

Many other countries have half-way disciplinary measures for delinquent officials, such as loss of pay for a few weeks or months, or transfer to an unattractive part of the country. Such partial measures are almost unknown in the United States service: most of our officials do their duty, obey orders, treat the public civilly, and feel a pride in their performance of duty; where they are remiss, the only way of securing good service is to use the power of removal in obstinate cases.

132. Minor Appointments and Removals.

Under the constitution, Congress may by law vest the appointment of such inferior officers as it thinks proper "in the president alone, in the courts of law, or in the heads of departments." (1) Thirty-six officers, including the librarian of Congress and the public printer, are appointed and removed by the president alone. (2) The courts are authorized to appoint their own clerks and reporters, and some clerical

officers. (3) The remainder of the vast number of minor officials of every grade are nominally appointed by the heads of departments. In practice, a great variety of influences work upon those who have the power of appointment. The president frequently puts pressure upon his secretaries to designate persons in whom he has confidence. The influence of senators and representatives over minor appointments within their districts is even stronger than over presidential appointments. For instance, the postmaster-general appoints and commissions all the 72,000 fourth-class postmasters having salaries of less than $1,000 each: one of the assistant postmaster-generals is detailed to make the appointments, subject of course to the overruling of the postmaster-general; and most of the places are filled on recommendation of members of Congress or other political leaders.

The federal civil service is carefully organized in subdivisions. Nearly every department has several assistants to the secretary, — there are three assistant secretaries of state, and four assistant postmasters-general; every department has from five to twenty bureaus, at the head of each of which is a chief clerk or other executive officer. Most of these officers, except where the appointments are subject to confirmation, are now included in the classified competitive service, and protected by an executive rule against arbitrary removal.

A great number of the clerks are nominated by the heads of their offices: for instance, the collectors of customs and of internal revenue appoint deputies, the commissioners of internal revenue appoint agents, the superintendent of the mint appoints all the officers employed in that office, registrars of the land office appoint clerks, and so on. All these appointments are, however, subject to revision by the heads of the departments.

The general principle is that the power which appoints may also remove; hence the heads of departments have nearly unlimited power over the minor officials, and for many years the result was a changeful public service. Down to 1829 it

was tacitly understood that subordinate officers of all kinds held during good behavior; but the political removal of the heads of offices in Jefferson's administration was undoubtedly followed by removal of minor employees. It was not till the introduction of the so-called "spoils system" into the national government in Jackson's administration that the principle was adopted of systematically displacing federal employees of all kinds because they did not agree in politics with the president for the time being. Jackson has been much maligned: there was nothing like a clean sweep of the presidential offices during his administration; but the political removals resulted, no doubt, in the disorganization of many public offices and in the ejection of many faithful subordinates. From Jackson's administration to Arthur's, the whole civil service has been demoralized every four years by wholesale political removals; and even more recently a postmaster-general boasted that he was cutting off the heads of a hundred fourth-class postmasters every day.

The underlying reasons for political removals are two. (1) The president and his cabinet desire to oblige their personal and political friends by giving them offices; and the only way to find plenty of places is to remove people without regard to their abilities or services. An interesting example is the appointment, by President Pierce in 1853, of his classmate Nathaniel Hawthorne to be consul at the lucrative post of Liverpool. (2) The holders of many federal offices have been expected to do party work, — to organize the primaries, to get out the vote, to make up slates for nominations; and that work can be performed only by political friends. An example is Buchanan's appointment of Joseph B. Baker to be collector of the port of Philadelphia.

If the object of the federal government is to give first one political party and then the other an opportunity to disseminate its principles, to instruct voters, and to organize forces for the next election, then the system of political proscription is reasonable. If the office of government is to carry on its

functions as effectively and economically as possible, then it is both wasteful and wrong to dismiss experienced employees simply to make room for inexperienced persons. Furthermore, if appointments and removals depend on political favor, the usual incitement to good service is taken away: the poorest official may be kept in if he does good party service; the most faithful official may be dismissed without a day's notice. Another result of the spoils system is an ignoble personal scramble both for appointments and for retention in office. In scores of instances the head of a department, on coming into office, has dismissed an incompetent or a disobedient clerk only to find within a few hours that the offender had behind him as "influence" a powerful senator or representative or local party leader, who insisted on his being restored.

Under such conditions of uncertainty, it is remarkable that the federal service has been so honest and efficient. The worst case of defalcation in the history of the government was that of Samuel Swartwout, collector of New York from 1829 to 1838, whose accounts proved to be short by more than $1,000,000. Since that time the government bookkeeping has improved, better checks have been devised, and during the last thirty-five years the loss to the government from the dishonesty of its servants has been very small. On the other hand, the loss to the public from rapid changes, especially among clerical offices, is difficult to estimate: it means a poorer service than it is reasonable to expect, for more money than ought to be paid.

133. Reform of the Civil Service.

The evils of appointment to minor office for political reasons, and of removals for the same reasons, very early became evident. Even in Jackson's administration there were investigations and reports of committees on these abuses; and President William H. Harrison, when he came into office in 1841, seemed disposed to forbid removals for political reasons. But the attention of the country was speedily diverted by the

terrible struggle over slavery, and then by the Civil War; and previous to 1883 Congress passed only four statutes on this subject: —

(1) The Four-Year-Term Act of April 14, 1820 (applying to collectors of public money), was really intended to enable Secretary Crawford to build up a political machine.

(2) An act of March 22, 1853, provided for the classification of most of the clerks in Washington: no clerk was to be appointed except on an examination conducted by the head of the office. Inasmuch as the chief upon whom the pressure to appoint was put was also the examiner, it is not to be wondered that the act was a farce. Some of the questions asked of candidates under those examinations were: "Where would you go to draw your salary?" "How many are four times four?" "What have you had for breakfast?" "Who recommended you for your appointment?"

(3) An act of 1864 provided for the appointment of thirteen consular clerks, by examination in the State Department.

(4) By act of March 3, 1871, a great reform was initiated: the president was authorized to prescribe regulations for the admission of persons into the civil service, and to ascertain the fitness of each candidate. The responsibility of organizing a new method of appointment was thus thrown upon President Grant, who was heartily interested in the reform. He appointed a good commission, with George William Curtis at the head; but in 1873 Congress refused to make further appropriations, and for the time the reform failed.

General Grant's commission drew up rules which included the great principle of competitive, instead of pass, examinations; and a few local collectors and other officials kept up such examinations in their districts. During the next ten years, the federal office-holders were repeatedly assessed a percentage of their salary for the campaign fund of the party in power, thus emphasizing the fact that federal officials, paid out of the federal treasury, were expected to be party agents. In 1881 President Garfield was assassinated by a disappointed

office-seeker, and in 1883 was secured the first effective civil-service law. Under it, during the past twenty years, nearly all the minor officials of the government except fourth-class postmasters have been placed under a system of appointments which ensures fitness, and which practically guarantees them against removal for political reasons.

134. Civil Service Commission.

The act of January 16, 1883, is the basis of the present federal civil service. It does not include elaborate details either on appointments or on removals, but authorizes the president to promulgate rules at his discretion. It lays down several definite principles, which, to use the convenient and applicable term of Mr. Roosevelt, create a "merit system" as opposed to the old "spoils system."

(1) The act provides for the classification of clerks and other officers into four groups, according to their compensation; and hence all the persons subject to competitive examination are said to be in the "classified service." (2) It creates a commission of three (not more than two to be of the same political party), to be appointed by the president and Senate, and removable by the president. (3) Examinations are to be open and competitive, and practical in their character, a period of probation to precede final appointment. (4) Appointments are to be apportioned among the several states and territories on the basis of population, — a clause difficult to apply. (5) Political assessments by any federal officials, or in any premises occupied by federal offices, are forbidden; and no person can be removed for refusing to contribute to a political fund. (6) No senator or member of the House is allowed to make any recommendation for the offices included in this system. (7) Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty are to have a preference, a provision which practically submits them to a pass examination only. (8) The law is not to apply to any person nominated for confirmation by the Senate.

President Arthur at once proceeded in good faith to put this law into execution. He appointed a commission, upon which six years later came Theodore Roosevelt of New York, the most efficient of all those who have ever been connected with the commission. President Cleveland, President Harrison, and President Roosevelt each in succession made large extensions of the system. Beginning with some of the clerks in Washington and in large post-offices and custom-houses, the system has gradually been extended to cover almost all the clerks in Washington, in the smaller post-offices, custom-houses, and revenue offices throughout the country, in the railway-mail service, the letter-carrier service, and the Indian service.

The present exceptions to the classified service (including certain officers within that service which it has been found impracticable to classify as competitive), number about 80,000 persons, as follows: (1) the presidential offices; (2) certain confidential or responsible offices, — as private secretary, cashier, and so on, — for which the head of the office has a right to choose his own man; (3) the fourth-class postmasters.

The Civil Service Commission has instituted a system of promotions from the lower to the higher grades, and usually a man enters the service through the lower grade and works up; hence government employees are anxious to make good records for efficiency in their offices. This system does not always secure the rise of the best men, and has been freely criticized.

The Civil Service Act says nothing about removals, except that no one shall be removed for refusing to subscribe to a political fund, and protection is established through an executive rule only; nevertheless, in practice the merit system is almost a complete bar against political removals. The head of an office does not like to part with efficient subordinates, for he wants to have his work done. Even under the spoils system a large proportion of the removals were made against the real wish and interest of the chiefs, in order to create vacancies to be filled by political appointees, presumably less

helpful; and old and superannuated public servants were likely to suffer. Under the classified service the man with a political backing cannot get an appointment unless he stands high on the list; hence removals are infrequent, and are usually intended for the good of the service. Indeed, one of the minor defects of the merit system is that, since there is no retiring allowance for civil offices, kind-hearted heads of departments hesitate to remove faithful employees who have grown old and can no longer perform their duties.

The Civil Service Commission holds its examinations throughout the country. Papers, copies of which are always kept for later reference, are made up by official examiners, with special attention to the particular service to which appointments are to be made: a copyist, for instance, must write neatly and spell correctly; a letter-carrier must have a good memory and a good physique; a book-keeper must be accurate in figures. A favorite falsehood about the examinations is that people are appointed because of their knowledge of totally unnecessary details, such as the distance from the earth to the moon. Such questions are not to be found in the papers of the National Commission, except in examinations for special positions; a government astronomer, for instance, might advantageously know the distance from the earth to the moon.

The practical difficulties in the way of the proper enforcement of the Civil Service Act are many: —

(1) An undisguised hostility is felt by many members of Congress, who feel deprived of a source of political strength because they can no longer make effective recommendations for office; though many members feel it a great relief not to be called upon to make decisions between rival candidates.

(2) There is a terrible pressure for the comparatively few offices left out of the classified service. For instance, when a census bureau was created in 1899, Congress so arranged it that nearly all the clerkships were filled on the personal recommendation of members.

(3) A few heads of offices seek to evade or to defy the statute. When a vacancy occurs, the head applies to the Civil Service Commission, which certifies the three highest names on the list of persons examined for that kind of position; if the chief does not know any of them, he commonly picks out the highest on the list. An ingenious official in Chicago asked for a certification, appointed a man, forthwith removed him, asked for another certification, appointed the next man and removed him, and kept it up till he reached a man well down the list whom he had set out to favor. Other heads of offices sometimes appoint men without the least reference to the Civil Service Commission; in such cases the Commission is apt to lay the circumstances before the disbursing officers of the treasury, who frequently refuse to honor warrants for salaries for such persons, on the ground that they are not legally in the service. In spite of the absolute prohibition of the statute, political assessments are sometimes made even by heads of offices and by senators and representatives.

(4) The complexity of the service causes trouble. The number and variety of offices is such that it is difficult to meet all cases; amendments to rules are frequently submitted to the president and by him put in force, and thus the rules become complicated. The question of confidential offices also makes trouble and confusion: some heads of offices strive to include persons whose service is only clerical; others detail a man appointed as a laborer or a messenger (and hence outside the civil service rules) to perform duties which ought to come under the classified service. The appointment of laborers in the government establishments has been greatly improved by the adoption of registration rules. This system was introduced in the navy by Secretary Tracy, adopted by the Civil Service Commission, and applied to the departments in Washington and also to arsenals and other army services.

The 72,000 fourth-class postmasters are for obvious reasons still left outside the classified service: their duties are simple, and easily learned by any intelligent person; nearly all such

postmasters have other business; and, since the government cannot afford to hire separate buildings, and the fourth-class post-offices are therefore nearly all in private houses or places of business, a competitive examination would not result in the selection of the person who owned the most convenient place for a post-office. In a few cases members of Congress have permitted an unofficial choice by voters of their party, and have recommended the appointment of the man who had the most suffrages; but nearly all the fourth-class postmasters are selected by personal favor or for political reasons.

The ideal method of appointing public officers is that used by railroads or express companies: to select young men who seem promising, give them opportunity, and promote the best of them till they reach positions of responsibility. If the president and heads of departments were left to themselves, this is the kind of national service they would work out; but the experience of the half century from 1830 to 1880 shows that no such system is possible under federal government. Neither the president nor the heads of departments are allowed free hand, or could under the conditions be allowed it; for they must appoint thousands of people whom they cannot personally know. Some impartial method must be found for designating officers, at least for first appointments. The competitive examination almost entirely takes out the element of political influence, and insures at least that the appointee shall be intelligent: it makes impossible such choices as sometimes happened under the old régime, where men who actually could neither read nor write were sometimes appointed as letter-carriers. A candidate once appointed, the merit system further allows discretion in promotions, and leaves the head of the office free to remove for cause. Though not a perfect system, it has given an efficient administrative body, with a strong feeling of responsibility and *esprit de corps*.

CHAPTER XVII.

THE FEDERAL JUDICIARY.

135. References.

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136. History of the Federal Judiciary.

The American judicial system is founded directly on the English courts, established by the crown to exercise the royal judicial power. The colonial judges were also usually appointed by the crown, or by the royal representative, the governor; but from the decisions of the colonial courts there was an appeal to the "king in council," that is, to a judicial body in England. Neither English nor colonial courts had authority to hold void an act of Parliament or of the colonial assembly: they took the law as it was made for them by the legislatures.

The new states during and after the Revolution created courts much on the colonial model; and the Congress of the Confederation created three kinds of national courts, all of which were subject to the authority of Congress. (1) Special commissioners were appointed to settle disputes between states which could not be impartially tried by the courts of either state. One of these commissions decided in 1782 that the Wyoming Valley belonged to Pennsylvania and not to Connecticut. (2) The "Prize Committee" of Congress was created to decide questions of naval captures. (3) To the so-called "Old Court of Appeals in Prize Cases," with the consent of some of the states, appeals were brought from the state courts. It eventually decided over sixty cases.

The establishment of the judiciary in the federal constitution is one of the most striking features of that great work. For the first time in the history of the world the three departments of government were thoroughly and coördinately organized; for the first time in the experience of federal government a system of courts was provided, not only for federal cases, but with the right to hear appeals from state courts; for the first

time courts were authorized to disallow state laws, and eventually to assert a similar power over national legislation.

Although the jurisdiction of the federal courts was carefully defined by the Constitution, their organization was left to the discretion of Congress; the only insistence was that there should be one supreme court, and that the judges should hold office during good behavior. In 1789 Congress proceeded to organize both supreme and inferior courts, and to arrange them in a progressive system on the model of the then existing state courts; and President Washington made the first set of judicial appointments.

The United States Supreme Court has such close and complete power of reviewing cases decided in the inferior courts that it has included most of the famous American decisions and many renowned judges, and the chief justice has been a great figure in the development of American law. The first three chief justices — Jay, Rutledge, and Ellsworth — had brief service, few cases, and little opportunity for legal distinction; then followed in succession two men whose service covered sixty-four consecutive years, and who set a strong individual stamp upon American jurisprudence.

John Marshall (1801–1835) was by far the most remarkable personality in the whole history of the national judiciary. An ardent federal politician, diplomat, and member of the cabinet before his appointment, he became, next after Madison, the man who did most to put into definite form the principles of the federal constitution. During his thirty-four years of service, Marshall himself drew a large number of opinions, especially in constitutional cases. By his extraordinary power of lucid statement of legal principles, and by an equal power of discerning what the American people desired their government to express, he made himself the most famous of all American jurists; and he had the triumph of bringing to his point of view a succession of associate justices, who were introduced into the Supreme Court in the hope of curbing him.

Under Marshall's successor, Taney (1835–1864), the per-

sonnel and the standpoint of the court were completely changed. Taney had a strong legal mind, but accepted the Jeffersonian principle that the federal government ought to govern as little as possible; and under his guidance the United States courts somewhat receded in power. The Civil War was so abnormal that the courts were bewildered, and made almost no decisions in restriction of the mighty national powers that suddenly sprang up. In 1864 Salmon P. Chase, recently secretary of the treasury, was made chief justice in a court for a third time rejuvenated by new appointments; and under him began a series of constitutional decisions, chiefly arising out of the Civil War and Reconstruction, which showed a renewed sense of power. Chase was succeeded by Waite (1874–1888), a man of much less individuality. Since 1888 Fuller has been chief justice.

137. Federal Judges.

The number of United States judges in 1901 was as follows: Supreme Court justices, 9; circuit judges, 27; district judges, 70; judges of the United States Court of Claims, 5; judges of the United States Court of Private Land Claims, 5. The influence of strong personality has been shown on the national bench not only by chief justices, but by such associate justices as James Wilson, Story, Woodbury, McLean, Miller, and Gray, and by many circuit and district judges. Courts are not free from human interests and passions: by the great dignity of their office, by the conservative tradition of the legal profession, by the effective though indirect way in which they decide public questions, judges are less subject to gusts of popular feeling than are other officials; but this advantage is gained only by extreme care in selecting them.

Every judge of the United States must be appointed by the president, subject to the confirmation of the Senate. This method was not common in 1787, for most of the state judges were chosen by the legislatures. Once inserted in the consti-

tution, it has never been altered, although most states have adopted the system of elected judges. The constitutional term is for good behavior; and the emolument of a judge cannot be diminished during his continuance in office. As young men are frequently appointed, the result is often a long term of service: six of the Supreme Court justices — Marshall, Washington, Johnson, Story, Wayne, and Field — each sat on the bench more than thirty years; William Cranch was a circuit judge for fifty years, and James S. Morsell for forty-seven years.

Although there is no constitutional requirement to that effect, none but lawyers are ever appointed to the United States bench; yet it is remarkable that not one of the chief justices of the Supreme Court of the United States since 1801 had ever been a judge before his great appointment, and that three — Marshall, Taney, and Chase — were or had been cabinet officers, as were several of the associate justices. Occasionally, though rarely, supreme judges are appointed out of the circuit and district courts; Justices Brown and Brewer were both promoted in this manner. A good state judge is sometimes transferred, as was Justice Grier of Pennsylvania in 1844, and Justice Holmes of Massachusetts in 1902. Some senators have been made judges, as Justice Woodbury of New Hampshire in 1845, and Justice White of Louisiana in 1894. President Grant in 1871 was very unjustly accused of making appointments to the Supreme Court with a view to securing a decision favorable to the legal tenders.

In character and efficiency the United States judges are renowned, though the salaries have been very slowly raised, and for men of such importance are still unreasonably small. Justices of the Supreme Court are paid $12,500 a year; circuit judges, $7,000; district judges, $6,000. By statute, judges are prohibited from acting as counsel or attorneys, and from engaging in the practice of the law. This does not interfere with their acting as trustees of property, but absolutely prevents their earning fees as lawyers.

There are five ways in which judges may leave the bench : —

(1) By death. Since 1801 every chief justice has died in office except the present incumbent, and many of the lower judges have held throughout their lives.

(2) By resignation and withdrawal from the bench. This was not uncommon in the early days of the federal republic, but during the last fifty years has been rare. Justice Curtis resigned in 1857 because he thought he had been ill-treated by Chief Justice Taney. It is rare for a judge to seek other office; yet Circuit Judge Gresham resigned in 1893 to become secretary of state, and Justice David Davis resigned in 1877 to become a senator.

(3) By resignation on a retiring allowance. Since April 10, 1869, by act of Congress, any judge who has held his commission ten years and has attained the age of seventy years may resign, and may continue to draw full salary during the remainder of his life. Judges frequently remain on the bench after seventy, preferring to be active; and occasionally men who have not served ten years, or have not reached their seventieth year, are retired by special act of Congress.

(4) By discontinuing the office. The only instance of this method was in 1802, when Congress, under the leadership of Jefferson, repealed an act passed by the Federalists a year previous, creating circuit judges; the judges who had been appointed a few months before thereby lost their offices, although they insisted that the act was a diminution of their salary, contrary to the constitution. This method cannot be applied to the Supreme Court, as that body was created by the constitution.

(5) By impeachment. In the whole history of the United States there have been but two removals by this constitutional method, — Judge Pickering in 1803 for violence on the bench, and Judge Humphreys in 1862 for adhering to the Confederacy.

The dignity of the office is such that the ablest men accept appointments to the United States bench. The salary is un-

failing, and the retiring allowance insures a support during life. Out of the 400 or more persons who have held United States judgeships, not more than two or three have ever been accused of corrupt practices, and few of other unjudicial behavior. Justice Samuel Chase of the Supreme Court was impeached in 1803–05, but the charges against him were harshness and political rancor rather than judicial unfairness; and no conviction could be obtained. Throughout the United States, the judges stand high for probity and for impartial service to the republic.

138. Federal Courts.

The regular federal courts are divided into four grades. At the apex of the whole system stands the Supreme Court of the United States, which has elicited the warmest praise from nearly all critics of American government, both American and foreign. The constitution requires "a supreme court"; but Congress determines the number of judges, their salary, and to some degree their jurisdiction. The original court in 1790 had 6 judges; in 1808, 7; in 1837, 9; in 1863, 10; in order to prevent Andrew Johnson from making appointments the court was reduced to 8, but was increased in 1870 to 9, where it has since stood.

The Supreme Court sits in Washington, at present in the small and rather incommodious chamber at the Capitol which for many years was occupied by the Senate. It is ordinarily in session from October till May. It appoints its own marshal, as well as its clerk and reporter. Until recently it was not the custom to affix to decisions the exact dates when they were rendered; hence a case which appears in the books as decided in the "October term, 1885," may actually have been decided in the course of that term sometime in 1886.

The method of the court is to hear arguments and receive printed briefs; the judges then compare views, and the chief justice designates some justice to prepare a written opinion. That opinion is later submitted and discussed. If any mem-

bers of the court are unable to coincide, they have a right to prepare dissenting opinions: sometimes there will be one "opinion of the court" and a single dissenting opinion signed by one, two, three, or four justices; sometimes each dissentient prepares his own opinion; sometimes, as in the Dred Scott decision of 1857 and the Insular cases of 1901, almost every justice states his opinion separately, perhaps expressing different reasons for coming to the same conclusion.

All these opinions are printed and published in official volumes, which are universally considered to be the most authentic statements of the principles of the federal constitution, because they include historical as well as legal arguments, and because they state not only conclusions but the lines of argument which led the judges to those conclusions. The publication of the reports is furthermore a check upon all national and state courts, since it compels them to take notice of previous decisions on the same issues; hence it is an aid to stability in the constitutional law of the country. The annual number of decisions made and reported by the Supreme Court is about 350.

As in the case of state courts, these decisions directly affect only the parties to the pending suits. If the court decide, for instance, that a patent belongs to one claimant, the other party will make himself liable for contempt of court if he ignores the decision. Other people, not parties to the suit, may ignore the patent without that penalty; but they know beforehand that any suits brought against them on that issue will result in their defeat.

The inferior courts of the United States are now arranged in three groups, ascending to the Supreme Court but not corresponding with the subdivisions of the judges: thus, a district judge may hold circuit court; a circuit judge may hold district court; a district judge may be transferred into another district. The underlying idea is that the business shall be sifted by proceeding from one court to another; and the system of exchanging judges makes it possible to use a judge in a

district where there is a congestion of cases. If a judge is personally interested in the case that comes before him, he withdraws. Many original cases involving issues of fact are tried by jury.

The lowest regular United States courts are the district courts (at least one in each state), before which most federal suits are brought. Next in the series are the circuit courts. The original plan was that the Supreme Court justices should, besides their general business, each act as a judge in a circuit court, sitting along with a district judge. From the first, the Supreme Court justices complained of the hardship of this double function, and in 1801 a distinct class of circuit judges was created to relieve them of that part of their work; but the act was repealed a year later. The Supreme justices continued on circuit until 1869, when the country was divided into nine circuits, and nine circuit judges were again appointed. Since that law, the Supreme Court justices occasionally appear and formally open a session; but the business is practically done by the special circuit judge or a district judge, or by the circuit and district judges sitting together. The circuit courts have original jurisdiction in many cases; but their business is largely the hearing of cases removed from state courts in suits where there is concurrent jurisdiction.

In 1891 it was found that the Supreme Court was about four years behind its docket, and hence midway between the circuit courts and the Supreme Court, by act of March 3, 1891, were created nine "Circuit Courts of Appeals," and additional circuit judges were provided for; so that at present seven of the nine circuits have each three circuit judges, and the other two have each two judges. To constitute a court, two judges must sit. On many cases the Circuit Court of Appeals has a final decision, not subject to appeal to the Supreme Court; but all district and circuit court decisions involving the federal constitution, laws, or treaties, or the constitutionality of state acts, may be reviewed by the Supreme Court.

In addition, the United States has created several special

courts, of which the most important is the Court of Claims in Washington, composed of five justices with a salary of $4,500 each. It has power to try cases of claims against the United States; if it finds money due, it certifies the amount to Congress, which appropriates for the purpose; it has no power to enforce a judgment against the United States. By an act of March 3, 1891, a Court of Private Land Claims was created, with five justices, their jurisdiction extending only to claims arising from or under the treaties of territorial cession by Mexico in 1848 and 1853.

Entirely outside of the judicial system are several national tribunals for federal matters. Such are the courts created by Congress in the District of Columbia, in the territories, among the Indians, and in the dependencies, under the special powers of the United States over the seat of government and the "territory or other property" of the United States. Such are the military and naval courts martial provided under the general authority of the United States to raise and govern armies and to make war. Such are the administrative tribunals attached to several of the executive departments: the commissioners of public lands and of patents render elaborate decisions, which are printed in regular series of *Reports of Cases;* the Treasury Department makes rulings on contested questions within its field of administration. So far as such decisions involve questions of property and of individual rights, they are appealable to the regular judicial courts.

139. Process of Impeachment.

A special method of ascertaining the guilt or the innocence of public officers charged with a crime is impeachment. This process has two roots: one in the original idea that Parliament was a "high court," a tradition still preserved in the English practice of making the House of Lords the final court of appeal in certain cases; the other in the desire of the House of Commons to control the executive business in England, which they could do only by exercising authority

over the king's civil officers. The process of impeachment was hence devised in order to remove from office ministers obnoxious to Parliament, and it was applied several times under the Stuarts; the latest English case was that of Lord Melbourne in 1806.

In the colonies there was no process of impeachment, because the chief executive officers were never subject to the authority of the assembly; but the process was revived in the new state constitutions, and is tolerably frequent against state officers of every kind.

The process was distinctly set forth in the federal constitution. The House technically "impeaches," — that is, by a majority vote it presents articles of accusation; the Senate then "tries impeachments." The president, vice-president, and all civil officers of the United States are subject to impeachment, and the process has been directly invoked in the following cases: — (1) In 1798 William Blount, senator from Tennessee, was impeached, but escaped on the ground that a senator was not a civil officer. (2) In 1803 District Judge Pickering was impeached and convicted. (3) In 1805 Supreme Justice Chase was impeached, but no two-thirds majority could be obtained against him. (4) In 1830 District Judge Peck of Missouri was impeached for arbitrary punishment of an attorney, but was acquitted. (5) In 1862 District Judge Humphreys of Tennessee was impeached for accepting the office of Confederate judge, and was unanimously convicted. (6) In 1868 President Johnson was impeached for violating the Tenure-of-Office Act and on other charges; the test vote was 35 for conviction and 19 for acquittal, and the prosecution failed for lack of one vote. (7) In 1876 William Worth Belknap, secretary of war, was impeached for bribery; but the impeachment failed for lack of one vote.

Thus, impeachment has been attempted by the United States only seven times: four times against judges, two of whom were removed; once against a senator, once against

a cabinet officer, and once against a president of the United States. Undoubtedly the knowledge that there is such a possibility as impeachment has been a deterrent in the minds of other public servants. The failure to convict President Johnson was a public advantage, for his real offence was that he was opposed to Congress; and he had but a few months more in office. Had a precedent been established that a president could be removed because two thirds of the senators did not like his policy, the independence of the executive must have been destroyed.

One of the difficulties in applying impeachment is that it can be invoked only in case of "treason, bribery, or other high crimes and misdemeanors," and hence will not lie except for offences which could be punished in the ordinary courts. Indeed, under the constitution the penalty of impeachment can be only removal from office and disqualification from further public service, and the party is thereafter liable to punishment according to the ordinary law. For the object of impeachment is not to punish for wrong-doing, but to put the individual out of the opportunity for further wrong-doing.

140. Federal Writs.

Like the state courts, the federal judiciary deals almost exclusively with specific cases. The justices of the Supreme Court refused to give opinions on the constitutionality of pending measures when President Washington requested them. The nearest approach to advice by the courts is the procedure of the Court of Claims under the so-called "Bowman Act" of March 3, 1883, by which the head of any executive department, or either house of Congress, or any committee, may submit or refer any claim or matter for the judgment of the court, such judgment to be sent to the party requesting the opinion for his guidance. Under special statutes, federal judges sometimes make appointments, as of the bankruptcy commissioners in 1867, and of supervisors of federal elections from 1873 to 1894.

The normal function of federal courts s to make judicial decisions in cases actually brought before them on contentions which involve the actual legal rights of at least two genuine parties. Nevertheless, like the state courts, they issue a variety of writs preliminary to suits, often on the representation of one party only. Among minor federal writs authorized by the judiciary acts are the following: (1) *scire facias*, used to enforce or vacate a judgment, recognizance, or patent; (2) *quo warranto*, commonly directed to a person holding office in violation of the federal constitution or laws, or to a corporation, directing it to show cause why its charter should not be forfeited; (3) *ne exeat*, granted in equity cases to prevent the defendant from leaving the United States; (4) *certiorari*, issued to call up for review in a superior court the record of a proceeding in an inferior court; (5) *supersedeas*, used to stay proceedings which ought otherwise to be carried forward. *Execution* is the order or warrant given to an officer to carry into effect the judgment of the court.

The three most important federal writs are *habeas corpus*, *mandamus*, and *injunction*. The general principle of *habeas corpus* has been discussed above. It is frequently invoked before federal courts in order to test the legality of an arrest under state authority. In the case of the Haymarket murderers in Chicago in 1886, it was prayed for before the Supreme Court of the United States on the ground that there were informalities in the trial contrary to the personal rights guaranteed by the constitution: the court declined to interfere.

The writ of *mandamus* may be directed to individuals or corporations to compel them to perform neglected duties, and is often granted by the Supreme Court against lower courts which have declined to take jurisdiction; but a more common use is against federal officials of every kind. Mandamus has frequently been sought against cabinet officers: in *Kendall* v. *United States* (1838), mandamus was issued against Postmaster-General Kendall to compel the payment of certain money.

The writ of *injunction* takes many forms. (1) It may be a temporary restraining order, to prevent one of the parties to a suit from disposing of property, or otherwise altering the existing status, pending a hearing on the merits. (2) It may be a permanent injunction forbidding a person to perform an act which would create consequences that could not be remedied by a later suit. For instance, injunction may be sought to prevent a board of directors from issuing new stock to the prejudice of former stockholders, because such stock once issued and sold to innocent purchasers could not be recalled.

(3) Of late years injunction has been pushed much farther. The United States courts have repeatedly issued "blanket injunctions," forbidding all persons from interference with particular federal functions. The most interesting case is that of Debs in 1894. The district court in Chicago issued an injunction forbidding all persons to obstruct the circulation of mails or the movement of interstate commerce. Debs was the leader of a strike in Chicago which was preventing the railroads from running, and for alleged refusal to observe this injunction he was arrested, fined, and imprisoned. The point made by Debs's counsel was that, if his client had done anything unlawful, he was entitled to a jury trial; that the court was not competent to add another penalty not defined by statute; and that injunctions did not lie against acts which were punishable under ordinary criminal law. The Supreme Court, on appeal, in 1895 affirmed the right of the lower court to grant the injunction.

The Debs case also illustrates another very important power of the court, — namely, to punish for contempt of court. This is an indefinite phrase which covers disrespect by counsel or witnesses, threats or actual personal violence against the judge, or neglect or refusal to take notice of writs issued by the courts; and sometimes it applies to public or newspaper statements that the judge is prejudiced. A judge has the right to direct the marshal and his deputies to arrest any such

offending person and bring him before the court; an apology or a promise of obedience may be accepted, or the court may punish by fine or imprisonment. So far as the personal protection of the judge goes, committal for contempt is absolutely necessary; but the arrest and imprisonment of persons who are charged with offences which might be punished in the ordinary method is contrary to the ordinary principles of free government.

141. Cases involving Federal Law.

The national courts are not created solely to apply national legislation, but to apply all the various kinds of legislation to national issues. A federal statute, a treaty, an executive order, a state constitution or statute, a municipal ordinance, a vote of the directors of a railroad, may all be parts of the legal conditions which a federal court must take into account. In like manner, state courts are constantly called upon to take cognizance of and to apply the federal constitution, statutes, and treaties. The fundamental principle is that the national courts shall, primarily or by appeal, have the right to decide all cases involving the exercise of federal authority or of rights and privileges created under the federal constitution. Such cases may arise either from the nature of the law applied or from the character of the parties to the suit. Let us first consider the various kinds of law referable to federal courts.

(1) We have seen that on questions not distinctly covered by the statutes the state courts refer to the "common law," — that is, to precedents of English traditional law as set forth in English, colonial, and state decisions. The United States courts make use of *procedure* under the forms of common law, even without a statute; but they refuse to take cognizance of criminal offences or to affix penalties, unless there be a distinct federal statute on the subject, and such statutes must relate only to crimes committed against the United States. In trials for violation of state laws, no questions are appealable

to the federal courts except those arising out of the federal constitution or laws.

(2) Exclusive federal jurisdiction extends to "all cases of admiralty and maritime jurisdiction." This means cases arising on the high seas and also on internal lakes and rivers, inasmuch as such cases may occur outside any state, and always concern general trade and traffic. A kindred special clause authorizes Congress to make rules concerning "captures on land and water," which is really a part of the war power.

(3) An important field of federal jurisdiction is that of international law. Cases affecting ambassadors, other public ministers, and consuls are especially mentioned; but many other cases arise under treaties or under international relations.

(4) To the United States courts go "all cases in law and equity arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This is the broadest field, for it enables the United States courts to compel the same construction of the federal constitution in all parts of the Union, and reserves to federal authority the right of maintaining federal laws. This power is absolutely opposed to the doctrine of state rights, which asserts the power to withdraw a state from the operation of federal laws.

142. Cases involving Federal Parties.

The other reason for special federal jurisdiction is the character of the parties.

(1) Foreign diplomatic agents as parties may sue or be sued only in the federal Supreme Court.

(2) Reserved for federal decision are "controversies between a state or the citizens thereof and a foreign state, citizens, or subjects." The purpose is to give to the United States, which controls foreign relations, sole authority over foreign questions; but suits by foreign governments are extremely rare. The emperor of the French in 1870 entered suit in an admiralty case in California.

(3) Federal in their nature are "controversies to which

the United States shall be a party." Since all federal criminal suits are brought in the name of the United States as plaintiff, this clause alone would give exclusive jurisdiction in federal criminal law; but the United States may also sue individuals for debt, for the non-fulfilment of a contract, or for wrongful possession of property. The principle is not applied against the United States: as a government exercising sovereign powers, suit will not lie against it without its consent. Such consent is sometimes given by acts of Congress; and the Court of Claims regularly entertains suits on private claims. In proceeding under the writ of error, the names of the parties are frequently reversed, so that *United States* v. *Jones* in the circuit court appears as *Jones* v. *United States* in the Supreme Court; but such cases are held to be a continuation of the original suit, and not a case brought against the United States.

(4) The next great category is that of suits "between citizens of different states, and between citizens of the same state claiming land under grants of different states." This clause gives rise to abundant litigation, for under it a claim which has arisen solely under state law may be sued in a federal court. Thus, a citizen of New York may enter suit to collect a debt against a Massachusetts citizen either in a Massachusetts court or in a federal court. One object of the clause is impartiality, which might not be secured in a state court toward a citizen of another state.

(5) Damage suits against federal officials for illegal behavior in office naturally go to federal courts. In France and Germany, an officer of the government who wrongfully performs an act under color of official authority can be sued only in an administrative court, practically composed of members of the executive. In England and the United States the contrary principle prevails: an official or an ex-official has no protection from his relation to national, state, or municipal government, other than that he may be aided by public attorneys. Nowhere in the federal system, either in the constitution or in practice, is there any limitation on suits by

private individuals against public functionaries in the ordinary courts.

143. States as Parties in Federal Suits.

The judicial power extends also "to controversies between two or more states; between a state and citizens of another state; and between a state . . . and foreign states, citizens, or subjects." The provision that states should be amenable to the jurisdiction of a court was not wholly new in American government; for before the Revolution disputes between colonies, especially on questions of boundary, had been subject to decision by the Privy Council in England; and under the Articles of Confederation there was a clumsy system for settling disputes between states by a commission appointed by Congress. It was, however, almost without precedent in the history of federal government that a judicial court should be established before which states should be obliged to appear as defendants. So far as states were plaintiffs, either against citizens of other states or against foreign states or citizens, the constitution thus provided a convenient meeting-ground; but in suits of state against state, and especially of citizens of another state or of a foreign state against a state, submission to the judgment of the Supreme Court was practically a denial of state sovereignty.

An issue on this question was speedily raised. In 1793 suit was brought by one Chisholm against the state of Georgia for payment of a debt. Although the government of Georgia absolutely refused to appear or plead or recognize the jurisdiction of the court, judgment was given by default. At once the Eleventh Amendment to the constitution was introduced, passed the Senate by 23 to 2, the House by 81 to 9, and four years later was added to the constitution. It provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state."

This principle was still further extended from 1882 to 1887 by decisions of the Supreme Court in the Virginia coupon cases, the point of which was that the state of Virginia had made the interest coupons on certain bonds receivable for taxes, but afterwards refused to receive them. A suit against the state treasurer to compel the reception was held to be practically a suit against the state, and therefore contrary to the Eleventh Amendment (*In re Ayres*, 1887). This goes very far toward establishing the principle that there is no judicial machinery in the federal government through which states can be compelled to pay money on private suits. In 1889 the Supreme Court decided that a state could not, without its consent, be sued in a United States court by its own citizens.

Nevertheless, some of the most interesting cases ever brought before the Supreme Court have indirectly affirmed the right of the United States courts to decide controversies between states and individuals. One of the earliest was the case of *United States* v. *Judge Peters* (1809), in which the Pennsylvania state authorities, by armed militiamen, protected certain persons against a marshal who attempted to arrest them under the authority of the United States courts; the state eventually gave way and allowed the federal courts to have their will. In the suit of *Martin* v. *Hunter's Lessee* (1816), the Supreme Court compelled the Court of Appeals of Virginia to follow the mandate of a writ of error. In *Cohens* v. *Virginia* (1821), the Supreme Court laid down the great doctrine that, although the Cohens were citizens of Virginia, an appeal could be obtained through writ of error in a criminal suit prosecuted against them by Virginia. The court held (1) that, since the case involved a privilege under federal law denied by the state court, it was a federal case, even though a state was a party; and (2) that, since the original suit was not commenced or prosecuted against Virginia but begun by the state, and since suit was afterwards continued by the writ of error, the Eleventh Amendment did not apply.

From that time there have been few attempts to deny the

authority of federal courts in such appeal cases, and numbers of suits arise against private parties which involve as collateral questions the powers of state governments; so that states are both directly and indirectly brought before the tribunal at Washington. In 1833, by the Nullification Ordinance and subsequent legislation, the state of South Carolina forbade appeals in revenue cases; but the so-called "Force Act" of Congress reiterated the authority of the United States. After the Civil War an attempt was made by New York holders of Louisiana bonds to transfer their holdings to the state of New York, which then entered suit for collection; but the Supreme Court refused to consider the case on the ground that it was not a *bona fide* transfer. A very curious attempt by a state to sue an individual was the case of *Mississippi* v. *Johnson* (1866), which was an application to the Supreme Court for an injunction to prevent President Johnson from carrying out the reconstruction statutes in Mississippi. The court without dissent refused to entertain a suit in matters "executive and political."

At present the position of the Supreme Court is that it will not take action to compel a state formally to appear against its will, except on the suit of another state; that it will not entertain suits against state officials, to compel them to perform duties against the will and direction of their state government; but that in controversies begun by a state against an individual, it will take jurisdiction on writ of error, and may decide against the state. In cases between individuals also, the Supreme Court freely discusses the statutes of the states, and often lays down limitations on their powers.

144. Appeals.

The Supreme Court has original jurisdiction in cases involving foreign representatives or states as parties; other distinctly federal cases must be brought in the inferior national courts. In addition, the Supreme Court "has appellate jurisdiction both as to law and fact, with such exceptions and under such

regulations as Congress shall make." Furthermore, "this Constitution and the laws and treaties made in pursuance thereof shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or the laws of any state to the contrary notwithstanding."

To carry out the latter provision, Congress has passed a series of statutes regulating appeals from inferior national courts. In 1789 it provided a method, never since altered, for appeal from state courts: in every case in which a state court questions the validity of a federal statute, or in which privileges claimed under the constitution are denied by the state court, there are three methods by which the suit may be transferred to a federal court: —

(1) Removal. In most cases involving federal law, there is concurrent jurisdiction, — that is, the case may be brought in either state or national courts; if entered in a state court and still pending, it may be "removed" to one of the lower federal courts, and the state court is thereupon bound to desist from further proceedings.

(2) Appeal. This term strictly means a re-trial of both law and fact. Cases may be carried by this process from lower to higher federal courts, but not from state to federal courts.

(3) Writ of error. This is a revision, by the higher court, of points of law decided by the lower court: a copy of the record must be sent up, setting forth the rulings of the lower court; if the higher court sees cause, it issues a writ of error, directing the lower court to alter its decision. Most of the Supreme Court cases of the United States are now brought up by this process from the United States courts or from state courts, and such a proceeding is popularly called an "appeal."

145. Declaring Acts Void.

The federal courts have an immense power over the state governments, through their right to declare state statutes void.

Although in 1787 scarcely any state was yet committed to the doctrine that its own courts could hold its own statutes unconstitutional, the federal constitution most distinctly and intentionally gave to the federal courts the power of disallowing state statutes because not in accordance with the federal constitution, or with laws or treaties made in pursuance thereof by the United States.

The history of the Federal Convention shows that the original plan was to give Congress a right to set aside state legislation, just as it may now reject territorial laws; that after long debate the plan was voted down, and that on the same day was introduced a project which gave to the federal judiciary power to interpret the constitution as the supreme law of the land. The constitution therefore restored the familiar system of disallowing colonial laws, even though approved by the colonial governor; but with the important difference that, while the crown might disallow colonial statutes for any reason that seemed good to it, the Supreme Court could set aside state statutes only in case they were contrary to federal law.

The principle involved is not the right to call up a state statute and annul it, but simply that a state statute contrary to the federal constitution or statutes cannot possibly come into being; that from the moment of its passage it has no life or force; and that therefore the court may leave it out of account in making up its mind.

The first distinct application of this great power was in the case of *United States* v. *Judge Peters* (1809), in which an act of the state of Pennsylvania, intended to prevent a decision by the court, was declared to be of no effect. Since that time there have been scores of such disallowances, including parts of state constitutions. For instance, in *Cummings* v. *Missouri* (1866) certain sections of the constitution of 1865 of Missouri, disfranchising and otherwise disqualifying persons who had aided the Confederate States, were disallowed because *ex post facto* and of the nature of bills of attainder.

Through such federal decisions the boundary-line between

state and federal powers has been drawn; for the Supreme Court constantly applies the limitations of the constitution upon states, and defines the border ground of legislation. For instance, in *Gibbons* v. *Ogden* (1824) the Supreme Court disallowed a New York statute giving a monopoly of steam navigation on the Hudson, on the ground that the Hudson was usable for foreign commerce. In 1891 the same court disallowed a Virginia statute requiring inspection of dressed meats, for the reason that it was a restriction of interstate commerce. Tax acts of the state have also been frequently set aside, the most notable case being *McCulloch* v. *Maryland* (1819), when a tax on the United States Bank was held invalid because the bank was an agency of the federal government.

Another long series of federal decisions on state acts is based on the clause that no state shall pass any law impairing the obligation of contracts, — a clause presumably introduced in order to prevent the enactment of such statutes as the stay and tender laws of states after the Revolution, by which the collection of private debts was delayed or prevented. In the hands of the Supreme Court the clause was speedily applied to legislative grants and charters. In the Yazoo land case of *Fletcher* v. *Peck* (1810), it was held that a grant of land once made by a Georgia legislature could not be revoked by a subsequent legislature, because it was a contract with the grantee. In the *Dartmouth College Case* (1819), the principle was widened by holding that a charter given to a college corporation for the public purpose of educating young men was likewise an irrevocable contract. During the last half century the Supreme Court has somewhat withdrawn from this extreme ground, by developing the doctrine of police power; but the general principle holds that, if a state legislature or a city council under state authority grants a charter or a franchise without a limit of time or the reserved right to alter, it is a perpetual grant. Under this principle states and cities have forever parted with privileges worth millions of dollars.

Disallowance of federal statutes by the federal courts is not distinctly set forth in the constitution, and it was many years before it became clear that such a power was necessary for the maintenance of a federal government. It is a power unknown to the English courts, and is prohibited by the federal constitution of Switzerland. In *Hayburn's Case* (1792) and *United States* v. *Yale Todd* (1794), the justices indicated their unwillingness to accept non-judicial duties, though prescribed by acts of Congress; but *Marbury* v. *Madison* (1803) was the first case in which a federal statute was declared outright unconstitutional, and that decision was really political and based on narrow technicalities, and the court ended by denying its own jurisdiction. The control of the executive and legislative departments had passed from the Federalist to the Republican party; but the Supreme Court was still Federalist, and the decision was intended to be a defiance of Jefferson.

It was fifty years before the Supreme Court again declared an act void, this time in the case of *United States* v. *Ferreira* (1851); but that case, like *Marbury* v. *Madison*, was a question of the organization of the judiciary. The *Dred Scott Case* in 1857, seventy years after the framing of the constitution, declared that the Missouri Compromise of 1820 was not authorized by the constitution; and this is really the first instance of setting aside a broad statute based on the general powers of Congress. Even this statute had been repealed by Congress three years before the decision; and five years later Congress abolished slavery in the territories, in flat defiance of the Supreme Court.

It is therefore accurate to say that not till the Civil War was over did the Supreme Court begin systematically to disallow acts of Congress not relating to the judiciary. Once started, it went very far. The most remarkable of the new cases was the disallowance of the legal-tender act, in *Hepburn* v. *Griswold* (1870), by four judges to three; the very next year that case was reversed by five judges to four. Among

about fifteen other instances within the last thirty years, the most notable are the *Civil-Rights Cases* (1883–1884), in which acts for the benefit of negro citizens were disallowed; the *Trade-Mark Cases* (1879), in which the power of the United States to register trade marks on general commerce was denied; and the *Income-Tax Case* (1895), in which, by a majority of one, a tax on incomes was held to be unconstitutional, because it was a direct tax which must be apportioned by population. In 1901, when great pressure was put upon the court to disallow statutes on the taxation of dependencies, the acts of Congress were upheld by five judges to four.

While the Supreme Court freely and frequently throws out local and state statutes, it hesitates to invalidate national statutes, and has done so in few cases except in the settlement of the confusion arising out of the Civil War. The Supreme Court acts on the presumption that Congress is within its powers, unless a case too strong for it to ignore is made out.

Part VI.

Territorial Functions.

CHAPTER XVIII.

LAND AND LAND-HOLDING.

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147. Functions of Government.

In a previous part of this work, attention has been called to the forms of American government and to the officers who carry it on; the remainder will be devoted to a study of the functions of government. Although in theory the sovereign power can always do anything within the reach of human forces, in practice it undertakes only such tasks as cannot be done by any other agency, or as are manifestly better carried on by public than by private instrumentality. War, foreign relations, the punishment of evil-doers, cannot be turned over to individuals or corporations; education, protection from fire, water supply, are better, easier, and more economical as public services.

The boundary-line between the things which government does, the things which it permits individuals to do under specific governmental supervision, and the things which the individual may do subject only to general restrictions, cannot be drawn *a priori:* the socialist will have government undertake every service that can be performed on a large scale; Thomas Jefferson wanted the least possible intervention of government. In this work we shall seek to discuss only what American governments actually undertake, and shall classify public services, for convenience, under five main heads, — territorial functions, financial functions, external functions, internal commercial functions, and general welfare. Under each of these heads will be discussed the division of functions between nation, states, and local governments.

148. Private Landholding.

The first element of national, as of individual, life is a spot of ground on which to stand; and the first question is, Who owns the land? (1) In some countries it is held by the community in general. For instance, much of the Russian farm land is the common property of the villages; for a few years the Pilgrim settlers of Plymouth held lands in common, but arable "commons" are now almost unknown in the United States. (2) In the colonial period Americans had a little experience of another form of ownership, — the feudal. Under the theory of feudal tenure, the whole land of the kingdom was the property of the crown, who could grant it to such of his subjects as he chose, on condition that they render him military or other service. The feudal tenure was dying out in England just at the time of colonization, and, though established in Canada and attempted in Carolina, the colonists looked upon it with disfavor. (3) Landholding subject to a quit-rent, or annual payment to state or proprietor, was tried in the colonial period; but it led to revolt and was eventually abandoned. (4) The normal condition of landholding in America has always been considered to be private ownership by individuals (or corporations), subject almost wholly to state law.

The landowner is bound not to allow disorderly or poisonous or noisy business on his land, to the disregard of the rights of other persons. Ownership of land includes the right to put structures upon it and to dig beneath it, and to use anything found below the surface. The United States might well have followed the German practice, by which minerals below the surface are not the property of the landowner but of the state. In America the owner of the soil owns the coal, iron, lead, gold, silver, or oil that may be extracted from any point perpendicularly beneath his surface holding.

One element of the value of land is the ease and quickness with which it can be bought and sold. In England the trans-

fer of land involves such expense that it is hard to buy small tracts advantageously. The American colonists and their descendants have devised and carried out a system of land transfer under which all sales, transfers, and mortgages of lands which are recorded — for very moderate fees — have legal force. Thus, if a man gives a deed of sale, and then a second deed, he may afterwards be punished for fraud; but the second deed will hold if it is presented for record at the public office before the first one. The first thing that a careful buyer of property does is to have an "abstract of title" made, — that is, a careful search through the records to see whether the person selling the land is legally possessed. In six states, by the so-called Torrens system, the state (in Massachusetts, the counties) will, if desired, make a search into a title, and give a certificate which is an absolute guaranty of title and possession.

Public taxes are a first lien on real estate. If taxes are long unpaid, the property is advertised for sale, and anybody who will pay more than the taxes due gets what is called a "tax-title," which means that, unless within a fixed time the original owner appears, claims his land, and pays up the back taxes, the purchaser will presumably own the land. If land is abandoned and thrown up by its holders, it almost always becomes public property through the non-payment of taxes: the New York state forest in the Adirondacks is in part thus obtained by the state.

The ease of tracing titles makes it safe to lend on landed security. A mortgage practically transfers an interest in the land to another party, and no subsequent sale can shake off the mortgagor's hold. If the money lent is not repaid, there is a legal method called "foreclosure," by which the land is offered for sale at public auction, and the holder of the mortgage is paid out of the proceeds, or perhaps takes the land itself. Thousands of millions of dollars are now lent by the great savings banks and insurance companies in mortgages on improved property.

Private holdings in the United States are very numerous. In 1890, 1,700,000 families owned real estate on which there were mortgages amounting to over $2,000,000,000; while about 4,400,000 owned real estate unincumbered, and more than 6,600,000 families rented real estate: that is, 12,700,000 families owned or occupied distinct areas of ground in the country and cities. Outside of the cities there were 5,000,000 families owning real estate, the property of 1,300,000 of these families being incumbered to the amount of $1,447,000,000. While a mortgage may be incurred simply to pay up accumulated debt, in more cases it is given as a part of the purchase money, and shows thrift; and in many other cases it registers simply a divided title, for the mortgage is profitable both to the borrower and to the lender, provided due effort is made to pay it off.

Notwithstanding the millions of tenants in America, especially in the cities, we have not developed the foreign system of large estates divided among tenant farmers. In the United States, 1,600,000 families were returned as occupying tenant farms in 1890; but tenant farms are commonly owned by one family and rented to another. Valuable timber or coal or mineral lands are frequently bought up in great tracts by a few people, — as the Mesaba iron-ore tracts in Minnesota. Twenty years ago a Mr. Delamater in Minnesota had one farm of about 50,000 acres of land; it was so big that he started ploughing teams in the morning to draw one straight furrow across the prairie till noon, and then they turned and ploughed another homeward. A few wealthy gentlemen have assembled large estates in the country, as for instance the Vanderbilt property, "Biltmore," of 100,000 acres, near Asheville, North Carolina; but few individuals hold large quantities of farming land for investment.

The selling value of land varies all the way from one or two cents an acre for desert land, to $200 a square foot, or at the rate of about $8,000,000 an acre, for good corners in the heart of business districts in New York and Chicago. In other

countries, especially in England and Germany, where real estate is dear and transfer difficult, the possession of land carries with it social prestige. This is not the case in the United States; yet well-to-do people enjoy living a considerable part of the year outside the cities, and hence many families own two houses, occupying each a part of the year.

149. Corporate and Railroad Landholding.

To the individual the owning of real estate is not an essential: nineteen twentieths of the families in New York do not own a square inch of ground. It is otherwise with certain corporations, which absolutely must have land. The railroads are among the greatest landowners in the country. First, they must own their roadbeds, which in the open country are commonly from four to six rods wide (66 to 100 feet), and form continuous strips from end to end of the routes, except when crossing highways. Secondly, they must have ground for stations and sidetracks, and in great cities must often have enormously expensive terminals. For instance, about 1880 the Pennsylvania Railroad bought up and destroyed a strip of houses a block wide and a mile long for an elevated structure in Philadelphia; to avoid such immense charges, the same railroad now proposes to construct tunnels under the Hudson River and the streets of New York, which will aggregate in cost $30,000,000. In the whole country there are 260,000 miles of railway, owning in the average at least twelve acres to the mile, or about 3,000,000 acres in all, equivalent to the whole area of the state of Connecticut. The trolley railroads commonly use the streets, although some of them have acquired strips of land for their roads.

Other great owners of real estate are the manufacturing establishments of every kind, some of which have plants covering several acres: for instance, the Baldwin Locomotive Works in Philadelphia occupy four solid city blocks for workshops. Mining and other corporations have control of enormous areas of land: for instance, the great railroads serving the

anthracite coal regions in Pennsylvania all own and operate coal mines of their own.

In the far West ranching companies have acquired immense and compact areas of government land for cattle ranges. In Texas, where the land was never owned by the United States government, there are some great estates; and in California, on land grants made before annexation, there is a stock ranch of 48,000 acres, a wheat ranch of 150,000 acres, and a vineyard of more than 14,000 acres, each of which is managed as a whole and is not subdivided into tenant farms. Large tracts of land have also been occupied by irrigation companies, which get possession of practically valueless land, and then draw water from the streams to make it fruitful. Logging companies buy up immense areas of land for timber: the valuable pine region in Michigan is now almost entirely deprived of white pine, and much of it is reverting to the state on tax title.

An increasing and perplexing form of corporate real estate is the mortmain — "dead-hand" — possessions of religious and humanitarian bodies, as churches, hospitals, asylums, convents, schools. These are in many states free of tax, cannot legally be given away, and are rarely sold.

Many of the states prohibit the holding of land by aliens, with the express purpose of preventing the building up of large estates managed by people who have no other interest in the country. With our system of land transfer, these laws can be made effective against an individual but not against a corporation, which may own real estate or mortgages, or may be owned by another corporation which has such mortgages; so that in practice there seems no remedy against the holding of land by people who do not live on it.

Up to the present time the soundness of country life and of local institutions has depended upon the large number of independent farmers living on the ground and looking after their own interests. Tenant farmers are likely to be shifting, and corporations are commonly little interested in the education

of children, the proper development of roads, and the saving of forests. Most of the great ranches, and of the lumber and mineral tracts in the country, have been gradually brought together by purchase from previous small holders; in many cases the big company has deliberately driven out the small holder by fencing in his only road, by stampeding his stock, or by buying him out. Throughout the country the tendency at present seems to be to increase the large landholdings and to diminish the smaller ones; so that there is less opportunity for a young man to start out and earn a farm by his hard labor upon it year after year than there was a quarter of a century ago.

150. Municipal Real Estate and Eminent Domain.

When a man dies without will and without heirs, his property goes, by what is called "escheat," to the crown in England and to the state in this country. A kindred right of the state is to take possession of real estate for public purposes, — streets, waterworks, reservoirs, public parks, and sites for public buildings. This power of "eminent domain" necessarily includes the right of a state, if the owner will not accept a price which the government thinks suitable, to submit to a suit from the owner, and let the court award a suitable price. The right of eminent domain belongs to the states, and also to the federal government for federal purposes; the states also permit the local governments to exercise the state authority for their needs.

The great privileges of eminent domain may also be conferred by the state or the federal government upon corporations created for public purposes, which need real estate in order to carry out those purposes. Railroads habitually use it for securing a right of way and ground for stations. The majority of owners make private terms with the railroad company, which insists on its legal privilege only where its offer is refused.

The greatest real-estate owners in the country, next to the

United States government, are the five hundred and odd cities. (1) They own the streets, or rather control the land so long as used for streets. In many states, streets and roads which cease to be public highways revert to the heirs of the original grantors. (2) Many cities own waterworks with large reservoirs, which perhaps lie outside the corporate limits of the city. (3) The cities own the parks, which are every year becoming more and more important. New York about 1860 created its beautiful Central Park, an example which was very slowly followed by other great cities. Until after the Civil War not a single great city on sea, lake, or river had appropriated any considerable part of the water front for a park; now there are such beautiful water parks as Lincoln and Jackson Parks in Chicago, Riverside Drive in New York, the Nantasket and Crescent Beach reservations for Boston, Gordon Park in Cleveland, the Battery in Charleston, and Belle Isle in the Detroit River.

The trotting horse, the bicycle, and the automobile combine to demand good roadways in cities; and hence have grown up systems of beautiful boulevards, broad, winding, and well-surfaced, reaching from park to park and often from city to city. Many cities, particularly New York and Boston, have cleared breathing-spaces in the heart of the slums, and have constructed pleasure piers and bathing beaches for public use. Outside the cities, village improvement societies have in many places kept the streets clean, planted shade trees, and laid out grass plots. People have at last come to understand that open-air spaces in the cities mean not only greater happiness to those who have the least opportunity for enjoyment, but also the lowering of the death rate and even of the criminal rate.

In a few American cities the community owns some or all of the docks, especially in New York, where this public property produces a large income. Had a little more pains been taken as the cities grew up, the water fronts, so valuable alike for recreation and for commerce, might have been preserved

in nearly their whole extent under the ownership, and to the profit, of the municipalities.

Every city owns many public buildings, — a city hall, schoolhouses (often to the value of many millions of dollars), engine-houses, police stations, workhouses, an almshouse, stables, paving yards, ash dumps, large institutions for the care of the defective and delinquent, and so on. Some American cities have municipal hospitals, and most of them public library buildings. Such holdings of real estate, provided by the sacrifices of past generations, are transferred to us as a trust.

151. State Real Estate.

The states are also large holders of real property for their own purposes. Many of them, between 1830 and 1870, constructed lines of canal or railroad, a few of which are still state property; and strips of real estate in a few states have recently been taken for commercial or irrigating canals.

A few states own considerable forests, especially New York, which has appropriated to this purpose tracts in the Adirondacks forfeited for non-payment of taxes, and has bought adjacent land outright or got it in exchange for tax lands. These forests are administered by state officials, who purpose planting the vacant spaces with trees, and managing them for the public profit by cutting a small part each year, as is done in the great forests of Europe. The forest reservations of the state of New York amount to about 800,000 acres, or 1,200 square miles. Several states have forest commissions.

States occasionally buy for public reservations historic sites, like the Rufus Putnam house at Rutland, Massachusetts, or Fort Washington on the island of New York, or Valley Forge in Pennsylvania. The state of New York has even been allowed to purchase the beautiful palisades on the New Jersey side of the Hudson. Several mountains in New England, especially Mount Wachusett and Mount Greylock, have been purchased for state reservations, and the system is likely to spread

through all the states which have natural beauties. In Massachusetts a state park board has taken large areas of woodland and roadway in the neighborhood of Boston, and has assessed the cost on the cities which get an advantage. The most notable state park is at Niagara Falls, purchased at great expense by New York, and now maintained as one of the most superb places of resort in the world. The head waters of the Mississippi have been included by the state of Minnesota in Itasca Park. In California the Yosemite Valley and the Mariposa Big Trees are state reservations. The whole of the St. Lawrence River and islands within the boundaries of New York may become a park under the control of the state.

State reservations are simply a setting aside for public use of mountains, valleys, and other places of beauty which would either be fenced in by greedy private owners, or would be ruined by the cutting or defacing of the trees. At present a very little money will go a long way toward securing such points of beauty, especially tracts of woodland lying near great cities. The Middlesex Fells reservation, in sight of Boston, is a region about five miles long and three miles wide, with beautiful lakes and forests, and was bought for a few hundred thousand dollars because it had never been settled.

As to forests, the argument is not only one of beauty but of profit. In the New England and Great Lake states, forests and mountains are a source of revenue because they attract thousands of summer residents. Moreover, the ruthless destruction of forests is thought to affect the flow of streams. The preservation of lumber supplies and of fuel is a duty which the present generation owes to the next one. A forest properly cared for may have about one fiftieth of its surface cut every year without injuring it, and that is the system used in the great European forests; indeed, in Germany the owner of a private forest is not allowed to cut a tree without the sanction of the state inspector.

The states are all holders of real estate for public buildings.

Every state has a capitol, most of them small editions of the Capitol at Washington. Notable among buildings of a more distinctive type are the beautiful Connecticut state house at Hartford, the new Rhode Island state house at Providence, the state capitol at Albany (which cost $18,000,000), the new capitol of Minnesota at St. Paul, and the large building at Austin, Texas. A few of the states, among them New York, Virginia, North Carolina, and Kansas, have what every state ought to possess, — a governor's residence near the capitol.

An instinctive dread of the over-influence of large cities has resulted in placing nearly every state capitol away from the state metropolis: the capitol of New York was in 1797 moved to Albany, the capitol of Pennsylvania to Harrisburg in 1812; of the thirty-eight cities in the Union having a population of over 100,000, Boston, Providence, Indianapolis, St. Paul, and Columbus are the only capitals. In many of the states the capital has been fixed as near the geographic centre as possible, upon the theory that it is convenient to the people, although of course the lines of railway communication always lead most directly to the largest cities. One of the states in the Union, Connecticut, for many years had two capitals, Hartford and New Haven, but it has finally settled upon Hartford; and in the small state of Rhode Island there are no less than four so-called "state houses," although Providence has now become the only capital.

The struggle over the seat of government goes down into the counties, especially in new Western communities; for the county town is certain to have public buildings and is likely to attract population. Hence fierce contests at elections held to decide on the county seat: in one case in Kansas the residents of the defeated town forthwith put their houses on wheels and hauled them across the prairie to the successful site.

It is very common to distribute the state buildings. The governor and the legislature must be at the seat of government because they act together; but the penitentiary, state

lunatic asylums, state normal schools, state university (which ought always to be either in the largest city or the capital city), are scattered throughout the state, upon the ground that it is not fair to give one place the benefit of these conveniences. Gifts of sites for such buildings are often made by local governments or individuals. Millions of dollars have been spent on land and buildings for state institutions of every kind: for instance, the state of Missouri has 4 insane asylums, 1 state prison, 4 normal schools, 1 university, 3 institutions for the deaf, blind, and feeble-minded, 2 state reform schools, and many other buildings.

152. National Real Estate.

The greatest landowner in the whole country is the United States of America, through the general government at Washington; for it has title to about one third of the whole area of the United States in North America, chiefly in the form of unsold public lands. The United States is also the largest owner of improved real estate, having about 2,000 separate pieces of property.

Outside the district of Columbia, the United States has 174 military posts, most of them only a few hundred acres in extent; such are the Jefferson Barracks near St. Louis, Fort Snelling near St. Paul, and Governor's Island in New York Harbor. There are 16 arsenals, armories, and ordnance depots, the principal one at Rock Island. There are 9 navy yards at various points on the coast, — as League Island on the Delaware below Philadelphia, and Mare Island in the harbor of San Francisco. There are 1,250 lighthouses strung along the coast of the ocean and lakes, and along some of the rivers. There are about 400 public buildings used for post-offices, custom-houses, and for the federal courts. Federal property is always solidly built and kept in good repair.

Much of the United States was originally wooded, and in the Rocky Mountains and the Sierra Nevadas there are still immense areas of uncut timber; recently also large areas of

ALBANY NEW YORK

SACRAMENTO CALIFORNIA

STATE CAPITOLS

public land have been set aside for national forest reserves, now amounting to more than 70,000 square miles of territory, an area greater than all the New England states together. Among the most famous of these reserves are the Arkansas Hot Springs in the Ozark Mountains; the Yellowstone Park, with superb spouting geysers and beautiful cañons; the upper Yosemite reservation; the General Grant and Sequoia national parks of Big Trees in California; all of which are kept up as national parks, policed under national authority.

Most of these parks lie within the boundaries of states, but have never been turned over to their control. There is no difficulty in maintaining these reservations so long as the log-cutters find plenty of private land; but as soon as lumber grows scarcer and dearer, great pressure is put on Congress to authorize the cutting of timber on government reservations.

153. The National Capital.

In the history of the world, the seat of government has usually been the metropolis of the country: Paris, London, Berlin, Vienna, are the largest cities in France, England, Germany, and Austro-Hungary. The colonial governments were also situated in the principal colonial towns: nobody dreamed of disputing the right of Charleston, Williamsburg, Philadelphia, New York, or Boston. The Continental Congress sat in Philadelphia, then the leading city of the English colonies; but since on two occasions it was assailed by mutinous troops, and the state authorities did not give it proper protection, Congress was convinced that the seat of government ought to be removed from the centres of population.

The federal constitution gave Congress authority to select a site for the national capital (not to be more than ten miles square), and to exercise exclusive jurisdiction over such district. The capital would still have been fixed in or near Philadelphia had not the two Pennsylvania senators quarrelled; and in 1790, by a compromise, the Northern members consented that the capital be fixed on the Potomac, provided the

state debts be assumed by the federal government. To President Washington Congress assigned the duty of selecting the precise site, and he chose a tract on both sides of the Potomac, including the village of Georgetown. A French engineer, Major L'Enfant, laid out the city; and, remembering the barricades of Paris in the French Rebellion, he not only divided it into squares like Philadelphia, but added great sweeping diagonal avenues, through which he supposed artillery might sometime be played. Washington is the most beautiful city in America, a favorite place of residence for people who can live where they like. It is the best-paved city in the Union, has the most beautiful public squares, and one of the most convenient systems of traction cars.

Except the churches and hotels and some private residences, almost all the notable buildings in Washington belong to the United States government. At one end of Pennsylvania Avenue is the superb Capitol building, the central part designed by the great architect Charles Bulfinch in 1818, and greatly enlarged about 1859; the central dome was an afterthought, but it is one of the most superb soaring structures ever raised by the hand of man. Near the Capitol is the Library of Congress, really a national library, erected at a cost of $7,000,000, and one of the world's beautiful palaces. One and a half miles from the Capitol northwestward is the White House, the official residence of the president.

The most majestic ornament of the city of Washington is the Washington Monument, an obelisk-like shaft of white stone, 555 feet high, and beautiful beyond description. Scattered through the city are numerous public buildings: the enormous Pension Office; the big and unsuitable Treasury Department; the great building of the State, War, and Navy Departments; the new city Post-Office building; the Patent Office; the National Museum; and the Smithsonian Institution. A plan is now on foot for laying out a superb esplanade from the Capitol to the Washington Monument, to be embellished with new public buildings arranged with reference to

each other; and in a few years Washington will become the most beautiful official city in the world. The United States has already expended more than $100,000,000 on public buildings within the District, of which nearly $40,000,000 went into the Capitol. Although Washington is so near the coast that it was taken in 1814, and was in some danger of capture from the sea in 1862, there is not the slightest likelihood of the removal of the capital westward.

154. The Public Lands.

Ever since the American Revolution the disposition of the public lands has been a serious political question. All of the present area of the United States, except the Columbia valley and the Pacific islands, has at some time been held by some European monarchy, and in most cases has been treated as royal private property for the time being. The English crown quickly transferred its right by wholesale grants to colonizing companies and royal favorites: for example, in 1632 the Baltimore family was made sole proprietor of Maryland, and the land was by it sold or given to private holders. At the time of the Revolution, most of the land east of the Alleghanies had passed out of the hands of the crown: a part of it was held by separate colonies; a part was private property; a part was subject to small annual quit-rents.

When at the end of the Revolution the western boundary was fixed at the Mississippi River, seven of the states to the eastward laid claim to strips of territory in this previously ungranted region; and a twenty-year dispute ended with the cession of a large part of its claims by every one of the seven claimant states. Before a single one of these cessions had been made, Congress, by a resolution of October 10, 1780, laid down the public-land policy of the following century, — that the lands "shall be disposed of for the common benefit of the United States." This vote was a pledge that the lands should not be held as a continuous public domain, and that the proceeds of sales should be used to extinguish the public debt.

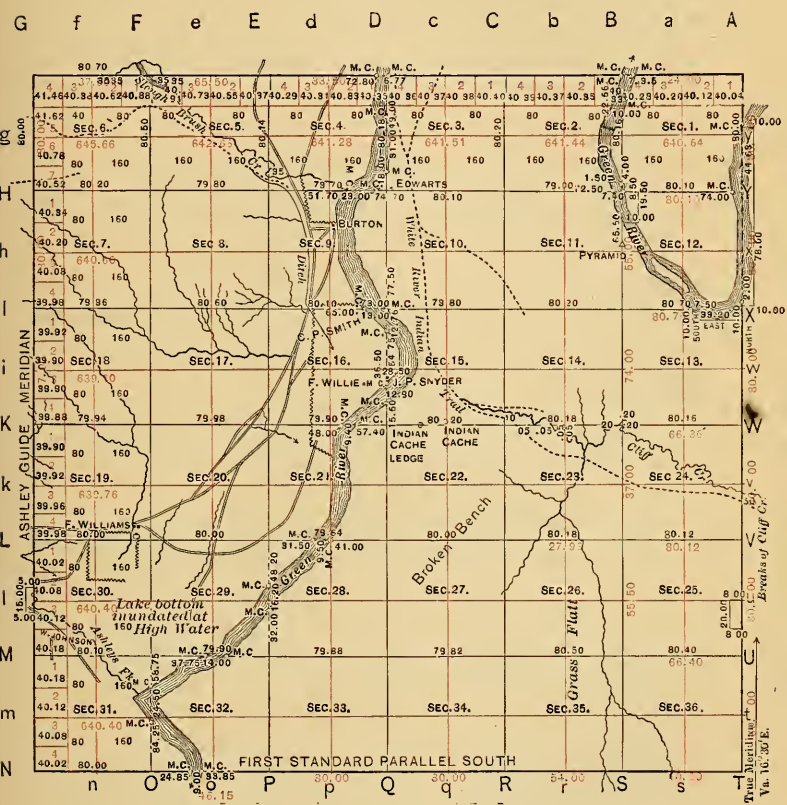
This pledge has been kept so far as possible, not only for the lands east of the Mississippi River, but for the successive additions of public territory. New areas of land, except what had already been granted to individuals, were added by accessions of territory, — Louisiana in 1803, Oregon from 1805 to 1846, West Florida in 1810–14, East Florida in 1819, New Mexico and California in 1846–48, the Gadsden Purchase in 1853, Alaska in 1867. Texas, when annexed in 1845, kept all its public lands; in the annexations of Hawaii (1898) and the Philippines and other Pacific isles (1898), most of the land is private property.

Of the 3,500,000 square miles comprised within the continental United States, 2,825,000 square miles have at one time or another been the property of the United States, and 1,675,000 square miles are still undisposed of. This enormous area, nearly one half of the Union, lies almost entirely in the Western states and Alaska, and is made up of desert, mountain, and arid regions; very little land available for ordinary farming is still owned by the United States outside of Alaska.

Under Jefferson's influence, Congress in 1785 adopted the intelligent and useful method of rectangular surveys, the principle of which is to lay out east and west lines a mile apart, and to cross them by north and south lines a mile apart; the square mile, or 640 acres, is called a section, and is divided into quarter sections of 160 acres. 6 miles in each direction include a congressional township of 36 square miles. Such townships are numbered as shown in the illustrative diagram; and in selling land the government deeds give title to, say, "the north-east quarter, section 22, township 5 south and range 13 east of the first principal meridian." All the surveys are recorded in official land offices; and claims for the grant or purchase of lands must be entered on those records until entirely out of the hands of the government, when, like any other private holdings, they must be registered in the local county record offices.

UTAH.

TOWNSHIP No. 5 South RANGE No. 23 East of the Salt Lake MERIDIAN.



RECTANGULAR SURVEY OF PUBLIC LANDS.

The three main objections to the rectangular system are as follows: — (1) The roads are laid out along the section lines, and hence commonly do not follow the valleys and streams, but go up hill and down dale. (2) The boundaries do not refer to natural objects, and the stakes are very easily displaced, a circumstance which leads to expensive litigation. (3) The government has never made a sufficient distinction between ordinary farming lands and timber, mineral, and grazing lands. Forested, stone, and coal lands are now listed to be sold for special high prices; and mining claims are entered and recorded as a separate system.

The rest of the former public land, about 1,170,000 square miles, or 748,000,000 acres, has been disposed of by the United States by one or the other of four methods, — sale, grants to individuals, grants to states for state purposes, and grants for internal improvements.

(1) About one fourth of the land of the United States has been disposed of by direct sales. From 1785 to 1800 large quantities were sold to colonizing companies who came to the seat of government. Since the small purchaser found it almost impossible to get what he wanted, in 1800 a new system was adopted of selling lands on credit through land offices out on the frontier. This led to the buying of more land than people could pay for, and about 20,000,000 acres were taken back by the government. In 1820, therefore, a third system was adopted, — that of selling land for cash in any quantity to any comer, at a minimum price of $1.25 per acre. This led in the two years, 1835–36, to the sale of 36,000,000 acres, chiefly to speculators, who disorganized the finances of the country and brought on a financial panic. From 1841 to 1891 most land sales were made under the pre-emption system, by which any head of a family might take up one tract of farm land of 160 acres by living on it for six months and paying $200. The available lands were so diminished that this privilege was withdrawn in 1891. The receipts for the sale of public land now foot up to about

$3,000,000 a year, chiefly from lumber and mineral land, desert land, or coal land.

Public lands valuable for timber or building stone, not being mineral in character nor fit for agriculture, may, if uninhabited and unimproved, be bought at $2.50 per acre in lots of not more than 160 acres by any one person or association. The land must be for the exclusive use or benefit of the purchaser and not for speculation. All public lands valuable for minerals, coal, salt, or petroleum are reserved for sale. Any citizen, or alien who has declared his intention of becoming a citizen, may prospect for minerals on the public domain and locate not more than 1,500 feet along a vein of ore and from 25 to 300 feet on either side of it on the surface. The end lines of his claim must be parallel; but he has the right to follow the dip of the ledge to any depth between these lines, although this may take him beyond the vertical plane of his side line. To retain his claim the locater must spend at least $100 worth of labor upon it each year: if he fails to do so the property may be relocated by others. When he has spent $500 worth of labor, he can obtain a patent from the government, if there is no adverse claim, by paying $5 per acre for the land located, and can purchase at the same price a mill site of not more than 5 acres. The patent gives him ownership and freedom from relocation. The process of entering and patenting a placer, saline, or petroleum claim is the same as for a quartz claim, but no location by any association shall exceed 160 acres nor more than 20 acres for each individual claimant. The patents for these lands cost $2.50 per acre. Coal lands are sold to the extent of 160 acres to any individual and not more than 320 acres to an association, but if not less than 4 persons have expended $5,000 in improving the land they may enter 640 acres. If the land is more than 15 miles from a completed railroad the price is $10 per acre, otherwise it is $20 per acre.

(2) Immediately after the Revolution began the practice of giving away lands to individuals. The Revolutionary troops

received about 10,000,000 acres; the soldiers of the Mexican War about 60,000,000 acres. After the Civil War there was no special military grant, because in 1862, by the Homestead Act, Congress had established the principle of giving away a quarter section of land to any head of a family, native or immigrant, after he had lived five years upon it and had paid a fee of about $40. About 200,000,000 acres have thus been given away, for the distinct purpose of stimulating the growth of Western states. In addition, by the Tree Claim Act, from 1873 to 1891 Congress gave 160, 80, or 40, acres of land to anybody who would agree to keep a certain number of trees growing on it for five years; this system led to frauds, and after 9,000,000 acres of tree claims had been allowed, it was given up. The homestead system has of late been much abused by cattle companies, who advertise for people to homestead in order to sell out to them.

(3) Of the original thirteen states, all except Rhode Island, New Jersey, Delaware, Maryland, and South Carolina had large tracts of wild land at the organization of the federal government; and they sold those lands for their own purposes. As new states were admitted, each, beginning with Ohio in 1802, received from the government a gift of public land within its borders. For school lands was reserved one section in each township (a thirty-sixth of the public domain); and, in states admitted since 1850, two sections in each township; the total is 70,000,000 acres. In 1862, land warrants for 10,000,000 acres, which might be located anywhere, were given to the states to found agricultural colleges. The six new states admitted into the Union since 1890 got 28,000,000 acres for various purposes, and lands are still being transferred to the states from year to year.

(4) By grants for internal improvements, first to the states and later to railroad corporations, over 140,000,000 acres have been given away. Many of the canals in states west of Pennsylvania had government land grants, followed in 1850 by the first railroad land grant to the Illinois Central. Most of the

great trunk lines radiating west from Chicago reserved such grants. In 1862 began the great land grants to the four main lines of Pacific railroads, — the Union and Central Pacific, the Northern Pacific, the Southern Pacific, and the Atlantic and Pacific. Great quantities came back to the government, because the projected roads were not built within the stipulated time; but the net gifts are over 100,000,000 acres.

By this consistent policy of the federal government to divest itself of its public lands as soon as possible, the principle of private ownership of land has been formally fixed; even the lands given to the states and to railroads have in most cases been speedily sold to individuals or corporations. Within the limits of the present city of Chicago there were originally 9 square miles of land reserved for school purposes, which, had it been retained and rented, would have splendidly supported the whole system of schools without a dollar of taxes. Large amounts of land are still held by the great railroads, although it is their policy to sell them, so as to build up traffic over their lines.

The operations of the Land Office in the fiscal year ending June 30, 1901, show the following data: —

Area disposed of, 15,600,000 acres; of which 1,300,000 acres were cash sales; 14,200,000 acres, miscellaneous entries and selections; and 100,000 acres, Indian lands. The cash receipts were $5,000,000, of which $3,600,000 was for land, $1,300,000 for fees and commissions. The expenses were $800,000.

The money return to the United States is less than might be expected; it foots up to $345,000,000; but the government has paid for various land cessions over $50,000,000, and for surveying and administering probably $200,000,000 more. It is unfortunate that the great value of the forests was not earlier realized, so that the white pines of Michigan, Wisconsin, and Minnesota, and the splendid red-woods of the Pacific coast, many of them over 250 feet high, might have been saved for commercial foresting. Mineral lands, especially gold

and silver, are not subject to entry under the ordinary system if their valuable contents are known; but many thousands of acres have been sold before their quality could be ascertained. A still more serious misfortune is that the government did not earlier realize that grazing lands cannot all be sold in tracts of 160 acres, since they are worthless without water: the people who take up the sections along the rivers really control the country back, and keep without rent millions of acres of public land, because nobody else can profitably use it. The government did not begin early enough to recognize that some lands could be made valuable by irrigation.

The process of distributing the available land is now almost completed: little desirable farming land remains in the hands of the government; and the most valuable remaining timbered areas have now been alienated, or are held back as national forests. The United States retains desert, rock, and mountains; but, except for its parks and reservations, within a few years the government will not own, outside of Alaska, any land that individuals will want to live on or to exploit.

CHAPTER XIX.

BOUNDARIES AND ANNEXATIONS.

155. References.

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156. History of the National Area.

The extension of the governmental area is a territorial function which falls exclusively upon the federal government. From the beginning the United States has been an expan-

sionist nation, and its area has been increased from 828,000 square miles in 1789 to 3,692,000 square miles in 1902. The area of the Union on July 4, 1776, was that of the thirteen colonies which were united in the Revolutionary War; but their boundaries were not quite the same as of those states at the present day; part of the present state of Georgia was then in South Carolina, and Western New York had not yet come into the jurisdiction of New York; Maine was a part of Massachusetts, West Virginia a part of Virginia; the people of Vermont were about to throw off their allegiance to New York; and in what are now East Kentucky and Tennessee there were settlements springing from Virginia and North Carolina.

In the course of the Revolutionary War, the Six Nations in Western New York were crushed by continental troops, and George Rogers Clark conquered most of the country between the Ohio River and Lake Michigan. When the treaty of peace came to be made in 1782, the boundary agreed to by the English commissioners included not only the thirteen states, but Vermont, the whole of the Northwest Territory as far as the head of Lake Superior, and also the territory south of the Ohio River as far as the 31st parallel. Thus, partly as a result of hard fighting and partly by skilful diplomacy, the United States more than doubled its area by the war.

The next great territorial accession was Louisiana, which in 1803 was bought for about $15,000,000 and included the whole western valley of the Mississippi and its tributaries, to their remotest heads in the Rocky Mountains. The boundaries of Louisiana on the south were ill-defined and hard to establish; eventually under the cession we yielded all claims to Texas beyond the River Sabine.

The next annexation was that of Oregon. The relations of the United States with that region began with the discovery of the mouth of a river, in 1792, by Captain Gray in the ship Columbia, and he named the river after his ship; but the act which many years later was seen to have settled the

question was the overland expedition of Lewis and Clark, sent out by Jefferson, which reached the Columbia in 1805. Our claim to Oregon was for a time contested by Spain, Russia, and England; and was not settled till 1846, when the present northwestern boundary of the United States was agreed on.

The next annexation was really that of West Florida, which from 1810 to 1814 was occupied in successive sections by United States troops under the belief that it was a part of Louisiana. Recent investigations have shown that the French did not intend to include it in the cession. Next came the annexation of East Florida, by the treaty of 1819 with Spain; the United States paid $5,000,000, and thus acquired the whole coast line from Maine to the Sabine River.

Next came the annexation of Texas in 1845. We now know that a part of the present state of Texas was claimed by France, and that we were really entitled to take possession of it instead of West Florida; but in 1819 it was agreed that Texas, then a part of Mexico, should remain Spanish. Three years later the revolt of Mexico included Texas; in 1835 Texas revolted and set up a separate government; and in 1845 the republic of Texas was incorporated into the United States.

The next year war broke out with Mexico. In 1848 that country ceded California, and what was then called New Mexico, including the present state of Utah. The southwestern boundary was found difficult to run, and in 1853 the so-called "Gadsden Purchase" gave an additional strip in what is now Arizona. In 1867, after the Civil War, the United States obtained from Russia what was then called Russian America, and is now known as Alaska.

In 1867 to 1871 treaties were negotiated for the cession of the Danish West Indies and San Domingo, but the Senate refused to approve them. Then for nearly thirty years there was a halt in annexation; but in 1898 the Hawaiian Islands were annexed, and in the same year Porto Rico, the Philippine

Islands, and Guam were ceded by Spain as the result of the Spanish War. In 1899 the United States acquired sole title to the island of Tutuila. Three little Pacific islands — Midway, Baker, and Wake Islands — have also been officially claimed by the United States since 1898; in addition, a few guano islands off South America and in the Gulf of Mexico, are temporarily a part of the United States territory.

157. Processes of Annexation.

This territory has been annexed by five methods.

(1) The original territory of the thirteen revolting states became theirs by the force of their own good right arms in the Revolutionary War: it was not a conquest, but a maintenance of a previous occupation.

(2) One large area and three small islands have come to the United States through the right of prime discovery of territory not previously held by civilized nations. The Columbia River was discovered in 1792; the first settlement, the trading post of Astoria, was established on the south side of the river in 1811; the first permanent settlers went there about 1832. The island of Tutuila belongs to us as one of three nations which were the first to exercise sovereignty over the Samoan group; Baker, Wake, and Midway are ours because visited by American vessels and claimed by us before any other civilized power.

(3) Several annexations have been brought about by peaceful treaties of purchase: Louisiana in 1803, East Florida in 1819, the Gadsden Purchase in 1853, and Alaska in 1867. In three of these cases the government which owned territory was glad to transfer it; in the other case, East Florida, Spain thought it better to part with it peacefully than to lose it by conquest.

(4) Three annexations have been made by military conquest: West Florida in 1810 to 1814; New Mexico and California in 1848; Porto Rico and the Philippines, with the island of Guam in 1898. In all three of these conquests

the government of the United States felt qualms, and in each case paid a douceur to the other party: by the treaty of 1819, $5,000,000 was paid nominally for East Florida, but from the Spanish point of view also for West Florida; $15,000,000 was paid to Mexico in 1848, and $20,000,000 to Spain with reference to the Philippines in 1898.

(5) In two instances territory has been annexed by the voluntary incorporation of independent states: Texas in 1845 and the Hawaiian Islands in 1898 were each annexed by a joint resolution, which is really nothing but a statute requiring a majority in both houses and the approval of the president. Texas was admitted as a state from the moment of annexation; the Hawaiian Islands were later created a territory.

158. Exterior Land and Water Boundaries.

The process of territorial growth has involved the United States in many serious boundary controversies. The original treaty of 1782 designated, on the northeast, a line from the sea round to the head waters of the Connecticut; but the negotiators had before them an erroneous map, and the boundary could never be located on the face of the country. Not until after long controversy was an agreement made, in 1842, to divide the disputed territory, and a sum of money was paid to the state of Maine for the extinction of part of its claims. Of late the claim has been put forth that there is no constitutional authority for ceding any part of the United States to any other power. Besides this precedent, and the transfer of an island in the Niagara River, the United States doubtless possesses under the treaty power the usual sovereign right of ceding territory.

The boundary through the St. Lawrence and its upper tributaries required many tedious surveys: in the rivers, the deepest channel was commonly the dividing line; in the Great Lakes, the line lies on the bottom of each lake about midway of its breadth.

The western line of 1782 was also impossible to locate, for

it was to run west from the Lake of the Woods to the head of the Mississippi, no part of which reaches as far north as the Lake of the Woods. This difficulty was adjusted in 1818 by a treaty with Great Britain, making the 49th parallel the division line as far as the Stony Mountains.

The Oregon boundary was a subject of controversy from 1792 to 1872, the term Oregon originally applying to the whole country between the Rocky Mountains and the Pacific, from California to Russian America. In 1819 Spain gave up any claim north of the 42d parallel; in 1824–5 Russia gave up any claim south of 54° 40′; this left Great Britain and the United States face to face, and in 1846 they agreed to continue the 49th parallel to the Pacific as a dividing line. A new controversy arose as to the water boundary out through the Straits of St. Juan de Fuca, and was settled by the arbitration of the Emperor of Germany, in 1871, in favor of the American contention.

The southern boundary was for many years subject to dispute. The line of the 31st parallel set forth in the treaty of 1782, though made without the consent of Spain, was in 1795 acknowledged by that power. Then from 1803 to 1819 raged the controversy over West Florida and Texas; in 1819 we gave up any contention west of the Sabine River and south of the Red River. Exactly what was the southwestern boundary of Texas when annexed in 1845 has never been ascertained: Texas claimed the Rio Grande "from its mouth to its source"; but this included New Mexico with the ancient Santa Fé, which had never been a part of Texas. By the treaty of 1848 the Rio Grande was made the Mexican boundary up to a certain point, and thence an irregular line to the Pacific. The line was disputed and set aside by the Gadsden treaty of 1853. At present all the boundaries from Passamaquoddy Bay to Puget Sound, and from the Rio Grande River to the Pacific, have been surveyed and marked by stone monuments. Part of the boundary between Alaska and British Columbia is still in dispute.

The eastern and western boundaries of the United States are the sea line. That does not mean the water's edge either at high or at low tide, but a line three miles out from the shore at low tide; furthermore, waters like Long Island Sound, Delaware and Chesapeake Bays, and the estuary of the James River are within the boundary of the United States, though their mouths are more than six miles wide. The sea boundary is therefore a line following the sinuosities of the seacoast three miles out, but crossing from cape to cape where there is a great land-locked water.

159. Territorial and State Boundaries.

The internal boundaries between the states and territories have been created by one or the other of three agencies — royal grants, state agreements, and acts of Congress.

(1) The boundaries of thirteen of the present states, from Maine to Georgia, are referable to grants made by the King of England in his capacity as feudal owner of the soil of all his kingdom — a right which could be practically exercised in the new world, with its wealth of soil unoccupied by Europeans. The royal grants were so vague and conflicting that many controversies arose in colonial times; some of which were settled out of hand by royal orders, some by intercolonial agreements, and some by decisions of the Privy Council in formal suits on appeal. The kings did not know the geography of the country, and gave impossible boundaries, as that to Virginia in 1609 "up into the Land throughout from Sea to Sea, West and Northwest." Successive strips of territory were granted on different terms of gift, sale, or transfer to a proprietor or company; and the only way to straighten them out was by consolidation: thus, Massachusetts absorbed Maine, Plymouth, and (at one time) New Hampshire. Different colonies contended for the same territory; as New York, New Hampshire, and Massachusetts for Vermont. Massachusetts, Connecticut, Virginia, and Carolina had grants to the Pacific Ocean, cutting across French and Spanish territory.

Pennsylvania and Maryland overlapped. Dutch, Swedish, and French occupation complicated the boundaries. Half a dozen distinct little colonies were absorbed; as Maine, Plymouth, New Haven, and West Jersey. Other colonies budded, as Delaware from Pennsylvania, and South Carolina from Carolina. At the time of the Revolution, however, the lateral boundaries, running inward from the ocean, were fixed almost as at present.

(2) By intercolonial or interstate agreement other important lines were adjusted before 1787. The dividing line between Virginia and North Carolina was run almost to the Mississippi River in 1779; Mason and Dixon's line between Pennsylvania and Maryland was run in 1763–67. In 1782 by a congressional committee of arbitration the Wyoming Valley was assigned to Pennsylvania and not to Connecticut. South Carolina made a small cession to Georgia in 1787. New York and Massachusetts came to an understanding in 1786 by which Western New York was given up by Massachusetts; New York also practically agreed to the independence of Vermont, which was not formally acknowledged until the state was admitted to the Union in 1791. Texas came into the Union on its own statement of its boundaries; a statement denied by Mexico, and one of the causes of the Mexican War. There have been a few transfers of small areas from one state to another, particularly of "Boston Corner," a region separated by rugged mountains from the rest of Massachusetts, which therefore became a resort for desperadoes until it was transferred to the neighboring state of New York in 1853. There is only one case of the subdivision of a state without its consent: West Virginia was set off from Virginia in 1862, and even here there was a nominal consent given by a legislature representing a fraction of the Old Dominion.

(3) The boundaries of thirty states have been defined by the acts of Congress admitting them to the Union. As parts of the adjustment of the state land claims from 1778 to 1802, Kentucky and Tennessee were admitted into the Union in

1792 and 1796. In 1802 began the process of subdividing the Western country into new states. When Ohio was admitted as a state in 1802, it was given an area of nearly 50,000 miles, that is, about the size of Pennsylvania; and this was the model for all the states east of the Mississippi River, no one of which has an area of more than 70,000 square miles. Texas, with 266,000 square miles, came in as a single state, and so remains. California under exceptional circumstances got an area of 160,000 square miles. The states west of the Missouri River, all admitted since 1860, were cut on a larger scale, — Colorado, Nevada, and Montana each having over 100,000 square miles. The reason is that so much of the area of those states is taken up by mountains that they never can have the concentration of population of the eastern communities. Nevada was admitted prematurely; it never had more than 62,000 inhabitants and has since declined to 42,000, who send two senators and a representative — it is the "pocket borough" of the Union.

A state boundary once adjusted by act of Congress is not often altered, although there have been a few cases: the boundary of California has been a little changed from the watershed of the Sierra Nevadas to a geometrical straight line; the northwest corner of Missouri was added seventeen years after the state was admitted. The boundaries of the territories have been changed from time to time, the principle being to create a large territory and then to subdivide it as population increased or as states were set off. Thus the Northwest Territory of 1800 was much smaller than the Northwest Territory of 1787; and Nebraska Territory for a few years took in everything north of Kansas, west of the Missouri, and east of the Rocky Mountains.

The boundaries of our island possessions are simple, — the three-mile line out to sea round the islands; after the Philippines were ceded it was found that two of the small islands lay outside the boundary of the treaty, and they were added by a subsequent purchase. With the exception of a

few agreements between states for exchange of territory or the running of disputed lines, Congress has defined the boundaries of all existing political subdivisions west of the Alleghany Mountains. Occasionally mistakes have been made in surveys: for instance, when Michigan was ready to come in as a state in 1836, it was found to include a strip of territory till then held by Ohio; and the dispute nearly caused a civil war. Congress adjusted the matter by giving to Michigan the so-called "northern peninsula."

CHAPTER XX.

TERRITORIES AND COLONIES.

160. References.

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161. Jurisdiction Contrasted with Ownership.

Ownership of land by individuals, corporations, municipalities, states, or the federal government implies the right to use it for crops, for taking minerals, for the site of buildings, in short for any purpose which does not interfere with the rights of other people. The main peculiarities of the ownership of land by governments are (1) that the holding rarely returns to private ownership, and (2) that government property pays no taxes. The municipalities pay none, because they are parts of the states; the states, because it would simply be appropriating money in order to pay it back into the treasury; the national government does not tax state or municipal property, and the states do not tax national property, because the right to tax involves the right to tax heavily if taxation be allowed at all, and either power might thus extinguish the authority of the other. In other incidents, public and private ownership are much the same: the states and the nation may buy and sell their real property, and may take and give title; both the private and the public owner may warn off unauthorized people from entering their land, and may sue the trespasser who commits damage. The private owner of land is in all cases subject to the higher authority of the government.

Private or corporate land, mines, or quarries may be compelled to receive government inspectors; the owner and his servants and tenants are always subject to the authority of governments to make, to execute, and judicially to apply laws over all property and persons within their boundaries. To this authority is usually applied the term "jurisdiction." For instance, the United States owns millions of acres of land in the far Northwestern states, but the states have prime jurisdiction over crimes committed upon those lands, over contracts made within them and relating to them, and over the personal relations of people living on them; on the other hand, in the territories of Oklahoma, New Mexico, and Arizona, hundreds of thousands of acres are owned by private individuals, but the authority to make laws for the transfer of property, for roads, and the like is not primarily in the representatives of those people, but in Congress.

There is a saying that "an Englishman's house is his castle," which means no more than that in England no person has a right to enter on the land of another in order to serve summons in civil cases. That principle does not prevail in the United States: no man may lawfully refuse to admit officers of the law, armed with a legal warrant, in search of persons charged with crimes or of evidence of the violation of law, or under due legal authority seeking to serve writs, subpœnas, and notices of suits. In practice, city policemen habitually enter, without warrants, all kinds of places where they suspect wrongdoing: for example, in New York City in 1902 gambling houses were repeatedly raided by the police.

The federal system involves a double jurisdiction, and sometimes a triple jurisdiction. For instance, federal laws against robbing the mail extend all over the Union, in all states and territories; but separate state and territorial laws against robbing banks also apply. A United States statute on interstate commerce, a state law regulating insurance on freight in transit, and a municipal ordinance against the whistling of locomotives within city limits, may all apply to the same train

on the same piece of track. The line between national jurisdiction and state jurisdiction does not coincide with the state and territorial boundaries, and is hard to define exactly. On some subjects there is concurrent jurisdiction: for instance, the United States lays a liquor license on the sale of liquors in every state, and some states lay another tax upon the sale of the same liquor. To distinguish between the two ranges of jurisdiction is the task finally of the United States Supreme Court. There are, however, several kinds of territorial area in which the jurisdiction rests solely in the federal government, or in such temporary local governments as it may create.

162. District of Columbia.

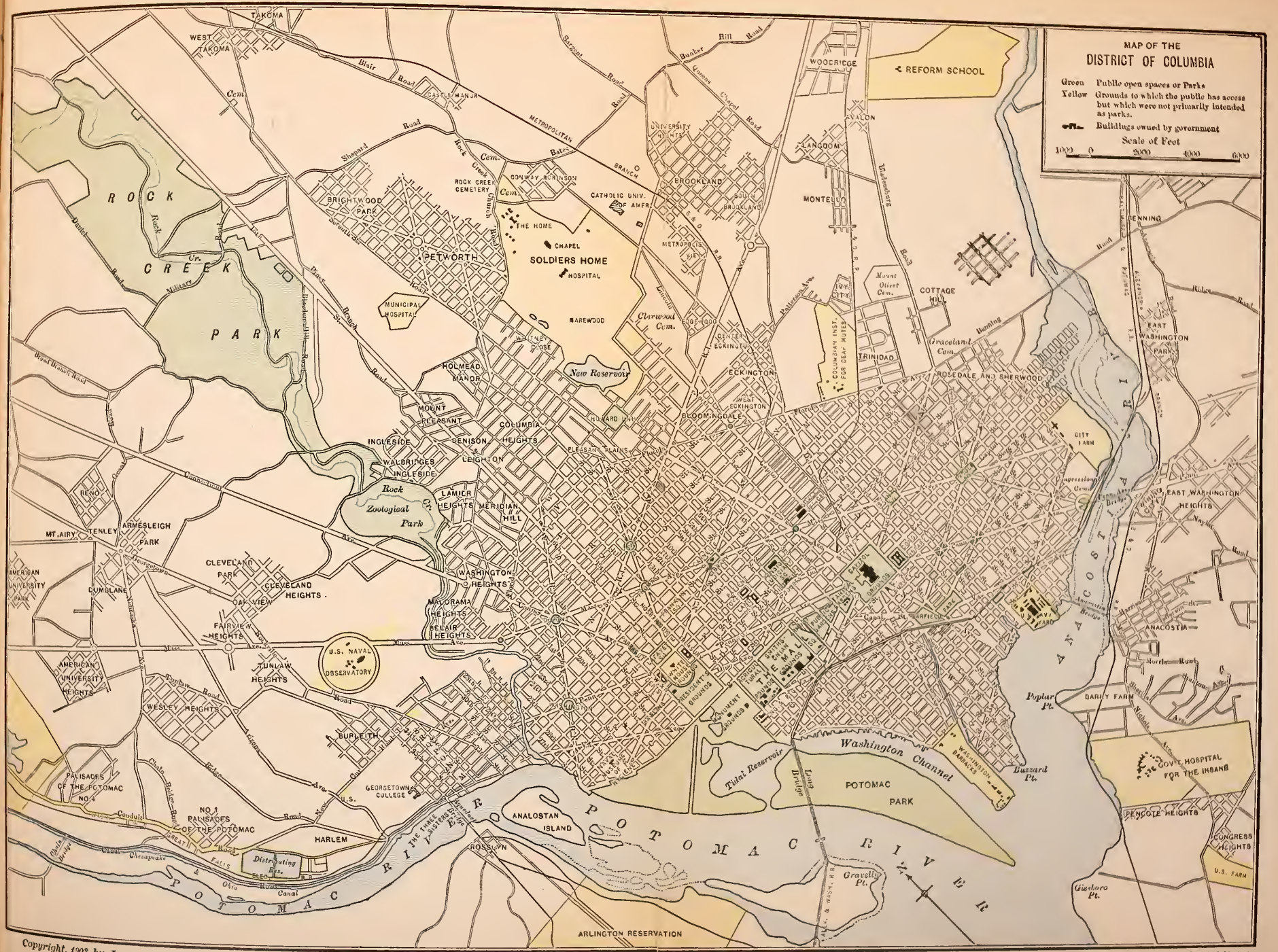
First of these special jurisdictions in public attention is the District of Columbia, which has been described in a preceding section as the seat of national government and the centre of national administration. In 1790, by their acceptation of the act of Congress on the seat of government, the states of Maryland and Virginia duly ceded all claim to jurisdiction over the District. Meanwhile for ten years the temporary seat of government was Philadelphia; but early in 1800 Congress, the President, and the Supreme Court took up their abode in the new city of Washington. Difficulties arose from the fact that the District had been partly Maryland territory and partly Virginia territory; and in 1846, at the request of Virginia, the southern part was receded, so that the present District of Columbia is an area containing about 70 square miles, wholly on the north side of the Potomac River. Its population is 279,000; the assessed valuation of private property about $198,000,000, and that of public property about $234,000,000.

Under the constitutional power to legislate for the District of Columbia "in all cases whatsoever," Congress in 1800 enacted that the then existing Maryland laws should apply to the part of the District north of the Potomac, and the Virginia laws

to the part south of the Potomac. For local purposes, the federal government has at different times set up three forms of government within the District: (1) in 1802 the city governments of Washington, Georgetown, and Alexandria, each with a mayor and two councils; (2) in 1871 a territorial government, with a governor and an elective house of delegates; (3) this government got heavily into debt, and in 1878 the District was turned over to three commissioners appointed by the president, with power to make local ordinances. The people have now no direct voice whatever in their local government: the only legislative body is the two houses of Congress. In addition Congress has provided a special system of courts for the District, with a supreme court, which is of special importance because it often has occasion to try cases which involve the powers of federal officials acting within the District. Since a large part of the real estate in the District is owned and occupied by the government, the United States pays one half the cost of keeping up the District government, and the rest is assessed upon the private tax-payers. The committees on the District of Columbia in the Senate and House, especially in the Senate, have large influence over this government, which costs about $7,000,000 a year.

Congress has, first and last, passed many special statutes for the District of Columbia, and most general laws (for instance, on bankruptcy, copyright, patents, the income tax) have been considered to apply to the District as well as to the states. In the Insular decisions of 1901, the Supreme Court seems to express a doubt whether a general law applies unless the District is particularly stated to be included.

The most serious question of government that ever arose in the District of Columbia was slavery. From about 1820 petitions for the abolition of slavery were introduced at frequent intervals; in 1850 an act was passed regulating the slave trade in the District; and in 1862 another statute set the slaves free, with a compensation of about $1,000,000 to the owners.



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DISTRICT OF COLUMBIA.

163. National Forts and Sites.

The same clause of the constitution which provides for the District of Columbia also authorizes "like authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yards, and other needful Buildings." Under this provision, the United States has acquired many sites for lighthouses, military posts, navy yards, arsenals, post-offices, custom-houses, and many other public buildings. A formal cession of jurisdiction is obtained from the state legislature. Such cessions are usually very readily granted, sometimes outright, more commonly with a reservation that the land shall be used only for public purposes, and shall revert to the state jurisdiction if the United States ceases to own it or to use it for the purpose for which it is ceded; and with other reservations as to jurisdiction.

In 1860–61 was raised the important question whether a state could reoccupy such grants without the consent of the United States. All the government reservations within the limits of the eleven seceding states, except three forts, — Pickens, Key West, and the Dry Tortugas, — were seized by the states in 1861; and the war technically began with the forcible capture of Fort Sumter by the state of South Carolina. Since the Civil War no attempt has been made to repeat such acts, and the principle is commonly accepted that by state cession such little tracts cease to be parts of the states, are not really within their boundaries, and are not subject to state taxation or to state laws unless there is a reservation to that effect. Crimes committed in them may be examined and punished by United States courts, although in such cases the courts follow the procedure of the local courts.

The question of criminal jurisdiction over territory thus ceded to the United States is somewhat perplexing, because most of such cessions include the restrictions that the state shall have concurrent jurisdiction, and that state processes run;

and Congress has enacted that even without such a reservation state processes may be served. This means that a person charged with committing a crime within a state, who takes refuge in federal jurisdiction, may be followed and arrested by state authorities; and that suits against residents of such territory may be entered in state courts.

Certain cases from their nature go to the federal courts, whether they occur within or without the special federal jurisdiction; such are maritime cases, seizures under United States laws, and offences against federal laws, — as, for instance, discriminating in interstate commerce or robbing the mails. Since 1841 Congress has by law prohibited the acquirement or the occupation of any land over which the jurisdiction of the states has not been extinguished. Where that precaution has not been previously taken, crimes committed in public buildings may still be tried by the state courts; otherwise, Congress has power to provide for exclusive jurisdiction in such places, without reference to state laws or to state courts; but in practice it allows concurrent jurisdiction for crimes not directed against federal authority.

The ordinary citizen is not aware of these distinctions: if he is robbed in a custom-house and the thief is caught, he appears as a witness without concerning himself whether it is a federal or a state court, and without noticing that in some cases the federal courts apply the law of the state. The real significance of the whole system is that it makes the federal government, in all its special jurisdictions, independent of the efficiency of state governments.

164. Indian Reservations.

The next form of special jurisdiction is Indian reservations. Originally the only owners of the soil were the Indian tribes: the English settlers from the first admitted that they could obtain a right to the lands only by the consent of the Indians. As settlements increased, especially after the Revolution, the new ground was taken that the Indians had only a right of

"occupancy"; and since the federal constitution went into force in 1789, nobody but the United States has had any right to deal with them. The Indian tribes cannot transfer lands either to individuals or to the state governments; yet the only constitutional authority for national care of the Indians is the clause that Congress shall have authority to regulate commerce "with the Indian tribes." The real basis of the whole Indian system is the precedent of government control in colonial and Revolutionary times.

Another principle on which the United States insists is that Indian lands do not belong to individual Indians, but to the tribes as a whole; hence the ordinary method of securing Indian lands has been by agreement between a tribe and the federal government. Such agreements were for a century called "treaties," and had to be duly ratified by the Senate. Since 1871, however, no "treaties" have been negotiated; instead, "contracts" or agreements have been made by the president alone, or by authority of Congress.

The basis of our Indian policy is to be found in the two principles that the land is tribal, and that it may be transferred only to the federal government. Before the Revolution, the white people possessed nearly all the belt of land between the Atlantic coast and the Appalachian range. After the Revolution, for half a century a system prevailed of drawing boundary-lines nearly north and south between the whites and Indians, the whites not to pass to the west, the Indians not to pass to the east. About 1830, the white settlements had so increased that they penetrated far into the Indian country; and President Jackson adopted the new policy of confining the Indians within reservations surrounded by ring boundaries, outside of which white people might settle, but within which they could come only as visitors. He also moved the tribes from Georgia and Alabama beyond the Mississippi River, where their descendants now live in the Indian Territory; and many of the tribes from the Northwestern states were moved into similar reservations.

So long as reservations were within a territory, it was simply a matter of convenience: one part was governed by a territorial legislature, another part, — the Indian reservation, — solely by Congress. When states containing Indian reservations were admitted, those reservations remained political islands, not included within the jurisdiction of the states: for instance, the Ponca reservation in Nebraska, the Rosebud Sioux reservation in North Dakota, and the Modoc reservation in Oregon are not legal parts of those states. The existence of such reservations in Georgia late in the twenties led to a violent protest from that state, and finally to the forcible incorporation of parts of the former reservations within the state's county system.

At present the federal government maintains 140 such reservations scattered throughout the West with a total area of about 76,000,000 acres, or 119,000 square miles, and an Indian population of 130,000. In the Indian Territory so called, there are governments with legislatures for separate tribes; but it has no delegate in Congress, and is simply a local form of government permitted by Congress. In other reservations the only organized government is the tribal: the chiefs may punish petty crimes and decide local matters; but the real government is the Indian agent, who is practically governor, judge, and marshal, often inflicting mild punishments. For many years there were no courts to try offences committed by Indians against Indians, or by Indians against whites; but in 1885 the jurisdiction of the federal courts sitting in some Western districts was extended over the neighboring Indian reservations.

The reservation system is now breaking down. The reservations from time to time diminish in size, because they contain good land much coveted by white settlers, and capable of maintaining from five to a hundred times as many whites as Indians. Some reservations have boundaries established by treaty, and can be diminished only by consent of the tribe, which has usually been obtained by paying a sum of money

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INDIAN RESERVATIONS.

[From the Map compiled by the Commissioner of Indian Affairs, 1901.]

for the cession, sometimes millions of dollars. Other reservations are established simply by an order of the president, and may be modified by him without ceremony. In general, the Western people do not like to have reservations in their neighborhood, and constant pressure is put on the government to diminish or abolish them. About 1880 efforts were made to move the Ponca tribes from their reservations in Nebraska into other states, but they pined for the homes of their birth, and went back to the lands from which they had been taken; and Congress finally restored their reservation.

165. Status of Indians.

Under act of Congress, the control of the Indians is vested in a commissioner of Indian affairs, appointed by the president and subordinate to the secretary of the interior. The executive officers of the Indian Bureau are the Indian agents, who until 1849 were also military officers; since that time they have usually been civilians. Each agent has a force of clerks, and often there is an agency doctor and farmer provided by the government; there are also schools at the agency and scattered through the reservation. The sale of liquor on reservations, or to the reservation Indians, is prohibited; but it is practically impossible to prevent such sale in the neighborhood of reservations, as it is to enforce the regulation that white people shall not go on the reservation and take up lands there. President Grant instituted a body of officials called the Board of Indian Commissioners, which goes about among the reservations and examines and reports, but has no power of control. The Indians can also make representations through their agents, and sometimes send delegates to Washington to urge their interests.

By act of Congress of February 8, 1887, an Indian who has formally left his tribe and settled down like other people becomes thereby a citizen of the state and of the United States, entitled to the same rights and privileges as other men; but

the Indians who remain with the tribes on the reservations are not subject to state laws, and have not the privileges of citizens.

From the beginning of the Revolution to the present day, the federal government has hoped and attempted to bring the Indians up to such a scale of civilization that they might be relieved of this anomalous status. During the last twenty years, it has made special efforts to get the Indians to divide up the reservations into farms held in severalty, — that is, each family to have a title to a particular tract, with the provision that they shall not transfer it within twenty-five years. About 108,000 Indians have thus come out of the reservation status; but about 130,000 remain on the reservations, practically as wards of the nation, as persons not sufficiently mature to protect their own rights. Their property, often very large, is held and administered for them; in most of the agencies they receive rations, practically distributed by the government; and they have government schools. For these purposes, Congress appropriates about $7,000,000 annually.

An exceptional status is found in the Indian Territory, inhabited by the so-called "five civilized tribes," the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, 85,000 in number. Many of them are well-to-do, have good houses, and maintain tolerable schools. They are very strenuous against holding land in severalty, because their tribal lands amount to about 20,000,000 acres, or about 250 acres for every man, woman, and child. Much is tilled as farm land; other large areas are valuable for grazing; and considerable tracts are underlaid by coal and other minerals. Notwithstanding the principle that the white people are not to live on Indian reservations, about 200,000 whites live in the Territory; although they cannot legally acquire title to a single acre of land, considerable towns have grown up in the heart of the Indian country by so-called "leases," frequently not authorized by the government. In addition, there are large trust funds, the proceeds of previous land sales, held in Washington

for the benefit of the Indians. This state of things cannot last much longer: it is probable that these Indians will soon be compelled to accept small areas of land in severalty, and that the rest of their land will be distributed among the white people. The property of these Indian tribes is so large that white people who have married Indians have sometimes sought to get themselves enrolled as members of the tribe and sharers in the common benefits.

It will thus be seen that there are three very distinct classes of Indians: (1) Those who have left their tribes and settled down. These include some of the remnants of the colonial coast tribes, as the Marshpee Indians on Cape Cod, the Gay Head Indians on Martha's Vineyard, remnants of the Iroquois in New York, and a few Seminoles in Florida; but the mass of citizen-Indians are those who recently settled in severalty, almost all of them on farms. (2) The tribal Indians on the reservations, which were not large enough to support the Indians by hunting, and are diminishing in area. Unless these Indians can make a living by farming, which is not common, they must be fed by the government or they will starve. (3) The civilized tribes in the Indian Territory, and also the Navajos, Maquis, Zunis, and other Indians in New Mexico and Arizona, who are intelligent and capable of taking care of themselves, and who have valuable tribal lands and other property. Some of them by the treaty of 1848 with Mexico are citizens.

The purpose of the government is to bring all the Indians to a self-supporting citizenship basis, but it is plain that the weaker ones will have to be supported by the government for a long time to come. What the Indians need is first of all a code of Indian laws administered by special courts. Then, too, many of the Indians who cannot become successful farmers can be useful as cowboys and ranchmen, and the government ought to encourage their raising stock. Twenty years ago, some progress was made in enrolling the Indians as soldiers; but the system broke down, not because they were

not brave, efficient, and disciplined, but because they would not consent to remain indefinitely away from their families.

The following table does not include Alaska: —

	Tribal Indians.	Other (taxed) Indians.	Congressional Appropriation.
1860	295,400	44,021	$1,683,419
1870	287,981	25,731	4,927,980
1880	240,136	66,407	4,713,179
1890	189,447	58,806	5,455,413
1900	129,982	107,706	7,108,406

166. Organized Territories and Dependencies.

The next form of exclusive jurisdiction is the so-called "territories." The only clause of the constitution on the subject is that Congress shall have power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Upon its face, this would seem to refer to ownership rather than to jurisdiction; but in 1789 Congress had already passed two ordinances for the government of the Western country, and presumably was expected to administer the inchoate states. The promise of statehood expressed in the votes of Congress in 1780, 1784, and 1787 does not reappear in the constitution.

The first national legislation for the territories was the Ordinance of April 23, 1784, which promised that Congress would establish temporary governments, and later state governments, provided the communities should be republican and should remain subject to the Articles of Confederation. The Northwest Ordinance of 1787 was still more detailed. It provided for two successive forms of territorial government: — (1) A governor and three judges were to be the legislature. (2) When there were 5,000 free men in the territory, they were authorized to set up a legislature, the upper house to be appointed by Congress, the lower house to be elective. This

form of government also contained the famous "Compact," which set forth that in the Northwestern Territory there should be freedom of religious worship and sentiment, habeas corpus, trial by jury, fair judicial process, and good faith toward the Indians; schools and means of education should thereafter be encouraged; and slavery should not be further introduced.

This Northwest Ordinance was practically the foundation of the later territorial governments; it was confirmed by the new Congress in 1789, and substantially reënacted for the territory south of the Ohio River in 1790. Most of the territories have gone through two stages of government, — first by an appointive council, and later by an elective body; in all cases statutes passed by the territorial legislature have been subject to the governor's veto, absolute or suspensive; and Congress always could, and sometimes did, annul territorial laws.

The only regions within the continental block of the United States which have never been territories of the United States are the thirteen original states, including Vermont, Kentucky, and West Virginia; and Texas and California, which were admitted without any preliminary territorial government. At present there are but three communities having governments of the ordinary territorial type: New Mexico, Arizona, and the Hawaiian Islands.

The governors of the territories, appointed for terms of four years, have frequently been sent out from the Eastern states; of late years it has become more common to appoint residents of the territories. There is also in each territory a secretary, a treasurer, an auditor, and often a superintendent of public instruction, all appointed by the president and confirmed by the Senate. In addition there is a body of territorial judges, appointed by the president for four years; strictly speaking, these are not "judges of the United States," but are appointed as a part of the general system for the care of territorial governments, and may be removed by the president for reasons which seem good to him.

The territorial legislature makes laws for the territory, and also creates local and municipal governments with power to make local ordinances. Every territory sends an elected delegate to Congress, who has the salary and most privileges of members, except the right to vote. The interest of the people of the territories in their government is smaller than that of the people of the states, because they have less control; but the territorial system is an excellent preparation for future statehood. The expenses of the territorial governments, about $200,000 a year, are borne by Congress.

The territorial legislatures have power to establish corporations for public purposes, but there are many limitations on that authority. They may authorize the laying of taxes for local purposes, but cannot assess general territorial taxes. Territorial or local debts may be incurred, and taxes for paying such debts may be laid, only by the permission of Congress.

National control over the territories is exercised partly by provisions in the statutes creating the territories, or by new legislation; partly by appeals from territorial courts to federal courts; and partly by the power of the president to remove territorial officers. The most striking instance of the disallowance of a territorial statute by Congress is the annulment, in 1887, of the laws of Utah relating to polygamy, and the dissolution of the corporation of the Church of Jesus Christ of Latter Day Saints, which had an old territorial charter; and the farthest point of control by Congress was reached when, by the same act, Congress provided for the confiscation of the property of the Church and its application to public education in the territory of Utah.

Territorial governments may be terminated in one of two ways: either by withdrawing the government altogether, as in Missouri Territory from 1820 to 1854; or by admitting the territory as a state, in which case the old territorial laws continue in force until altered by the new state government.

In the early Western territories, the organizing force was men of Anglo-Saxon stock, emigrants from the Eastern com-

munities. A new problem was presented in 1803, when Louisiana became a territory, with a French and Catholic population, a different system of laws, and a total lack of experience of representative government; the new community protested so strongly against the appointive legislature created in 1804 that in 1805 it received a representative legislature. The Floridas had a small population when annexed, and within a few years Anglo-Saxons arrived in sufficient numbers to take possession of the government. Texas had been organized by settlers from the United States long before it was annexed. California had less than 300 Americans when it was annexed in 1848, but the discovery of gold speedily brought an American and European population, which organized a state government; it never was a territory. New Mexico and Arizona to this day have many Mexicans; in these communities it has been found hard to organize a government on the American pattern.

The conditions were different in the three annexations of 1898, — the Hawaiian Islands, Porto Rico, and the Philippine Islands. The Hawaiian Islands contain about 35,000 natives, 26,000 Chinese, 61,000 Japanese, 13,000 Europeans, and about 20,000 Americans and their descendants. The territorial government established by Congress in 1899 was of the usual type, with an elective legislature and an appointive governor of American descent resident on the islands; but it has been found hard to make the system work with a mixed population. Porto Rico, the whole population of which is a civilized people, received in 1900 a special and unusual territorial government, in which the upper house of the legislature contains a majority of appointive members; the governor is appointed by the president, and sent out from Washington.

The government of the Philippine Islands presents more difficulties, because they contain a large civilized population, and also a large element of natives of various degrees of savagery; and because, from the occupation of Manila in 1898 down to 1902, an insurrection was continuously going on.

For the government of the Philippines, Congress on March 2, 1901, adopted the unusual, though not unexampled, method of authorizing the president to establish such a form of government as he saw fit; but on July 1, 1902, a thorough detailed territorial government was established, headed by an executive commission. There is provision for future representation of the people, and they already take part in the local governments so far as they show capacity.

At present there are three very distinct types of legally-organized territorial governments: — (1) That enjoyed by nearly all the territories from 1787 down, with a representative territorial assembly and with considerable powers to make laws. There are now four such territories, — New Mexico, Arizona, Oklahoma, and Hawaii. (2) The form applied to the Northwest Territory, in which one branch of the legislature is appointive, thus giving the president indirect power to prevent legislation which he thinks unwise. Porto Rico is at present the only example. (3) Areas in which the people have no part in choosing their legislatures, and therefore no self-government in general matters, although local self-governments may be set up. This is the type of Alaska and the Philippines. All these types of government are created by act of Congress, may be altered by act of Congress, and have no other authority than such as Congress chooses to confer upon them.

In any other country such governments would be called "colonial." Indeed, the present government of Oklahoma strikingly resembles the government of New York before the Revolution: an appointive governor; judges appointed directly or indirectly by the crown; an elective assembly subject to the governor's veto; acts passed and approved by the governor, subject to reversal by the home government; appeals allowed from the decisions of the judges to a court of the general government. In truth, the territories are and ever have been colonies, the main difference from the English colonies being the expectation that the territories would

eventually become states; but Montana was nearly ninety years in the territorial condition before it was admitted into the Union, and New Mexico with a considerable population has remained a territory from 1850 to 1903.

167. Unorganized Dependencies.

The next group of regions subject to the exclusive jurisdiction of the United States is territory which has become a part of the Union but has received no organized government, and the people of which have not a completely-defined body of rights. To make this subject plain, the various steps in acquiring authority over new territory must be noticed.

(1) During a military campaign outside our boundaries, the commanding general exercises governmental authority over all the territory within his lines, as a part of his power to make war. For instance, in the Mexican War, General Scott laid and collected customs duties and internal taxes in Mexico; and in 1899 General Wood laid taxes in Cuba. Such acts hold good till the region thus occupied becomes vested in the United States by a treaty of peace.

(2) After cession by a treaty, before Congress has taken any action, to some degree the acts of the previous military government are continued in force provisionally; but no tax can be laid except by Congress. When in 1899 the president authorized a special tariff for Porto Rico, the Supreme Court decided that nobody but Congress could levy or authorize the levying of taxes in such annexed territory.

(3) Congress may pass temporary acts for the government of territories and may define their powers. The precedents cited above show that Congress has often enacted such laws, — as, for instance, the act of March 3, 1901, authorizing the president to establish a civil government in the Philippines.

(4) Do the previous general statutes of the United States apply to the new regions as soon as they are annexed? Since, under the theory of the American government, no community except a state has a right to create a government for itself,

what is the situation of the annexed people? After the ratification of the treaty of 1803, and before Congress had passed any statute, — that is, for about a year, — Louisiana remained in an unorganized condition. On October 31, 1803, Congress authorized the president to take possession of the territory, and to administer it until Congress should act; on March 26, 1804, the first form of government for Louisiana was created, with an appointive council; and on March 2, 1805, the normal territorial representative government was established. So in 1821 Congress authorized the president to take possession of Florida; he deputed Andrew Jackson as governor, and endowed him with all the authority previously exercised by the Spanish captain general, till a regular territorial government was organized. From 1846 to 1848 Oregon remained without a territorial government. California was acquired in 1846, and during the war was administered by a military governor; in 1848 it became a part of the Union, but no territorial government was ever organized, and two years later it was admitted as a state. Alaska was annexed in 1867, and was made a customs district in 1868; in 1884 Congress authorized a governor and a district court, and enacted that the laws of the state of Oregon should be the laws of the district of Alaska so far as applicable; in 1899–1900, better regulations for government were adopted and also civil and criminal codes; but it never has had a regular organized territorial government. The basis of these precedents, which do not always agree with each other, must be found in one or another of two colonial theories.

(1) The first theory is that, the moment a treaty is ratified, the people of the territory are thereby completely incorporated into the United States, so that every law passed in general terms applies to them: they come within the customs boundaries and are subject to the same rate of import duties as residents of the states, and are entitled to unrestricted trade between the different parts of the United States; above all, the people of such regions become subject to all the privileges

of freedom embodied in the constitution, such as trial by jury, habeas corpus, indictment by grand jury, counsel in criminal cases, and the right to keep and bear arms.

This theory of incorporation is subject to two practical difficulties, not felt when Louisiana or Oregon or even Alaska was annexed, because these territories were all in North America, and because at the time of annexation the number of people concerned was small. (*a*) The principle would require the collection of import duties on the same scale in Porto Rico and the Philippines as in New York or California, a system which might not be to the interest of either the continental or the insular United States. (*b*) The American and English system of judicial rights is not in accordance with Spanish law, nor is it adapted to people of imperfect civilization, or to a community in which there are people of very different grades of civilization.

(2) A rival theory is that, when territory is annexed, it ceases to be foreign territory but does not become complete domestic territory, — that, until Congress acts, it is in a midway status; hence that, although duties cannot be collected under the regular legal tariff on foreign imports from Porto Rico into New York (because Porto Rico is not foreign), yet Congress may specifically extend the regular tariff to the annexed territory, or may provide a special rate of duty on importations from the dependency into the states (as from Porto Rico into New York), or may provide a special tariff on imports into the dependency from a foreign territory.

This theory was upheld and the discretionary power of Congress over the tariff in the dependencies was approved by a majority of the Supreme Court in its famous decision in the *Insular cases* in 1901. The judges said that it was in the power of Congress to decide when territory was completely incorporated; and that, when new territory came into the Union, Congress might make for it a set of laws (including tax laws) different from the laws applying to that part of the

Union organized as states. The court did not distinctly pass on the question whether the people of the dependencies have all the personal rights guaranteed by the constitution, contenting itself with holding that such clauses of the constitution as are "applicable" apply to the dependencies.

In accordance with these decisions, the president by proclamation, on July 25, 1902 (the conditions imposed by the act of Congress of April 12, 1900, having been fulfilled), formally brought the island of Porto Rico within the customs boundary, and then gave it entire freedom of trade to and from the states; but Congress, on March 8, 1902, made a special scale of duties on importations from the Philippines into the continental United States and vice versa, and a special tariff on importations into the Philippines from foreign countries. On the question of personal rights, it enacted on July 1, 1902, that the constitution, excepting the clauses for a jury trial and the right to keep and bear arms, should apply to the Filipinos.

The reasoning of the Supreme Court would seem to make a fundamental difference between the people and governments of that part of the Union organized as states and the people and governments of other parts of the federal union. It places the present dependencies upon the following principles: — (1) When territory has been admitted as a state, its people have all the guaranties expressed in the constitution, and are subject to all the general acts of Congress. (2) For regions outside the states, Congress has the right to create such forms of government as it sees fit; but in practice it creates representative government, except where it believes true representation cannot be obtained; and all such governments are subject to alteration or control by Congress. (3) Congress may adopt a special tax system for such regions. (4) Congress decides when new territories shall be incorporated into the Union, and may by statute declare that the people of a particular territory, or of the territories altogether, are entitled to certain specific constitutional rights. When an act of this

kind is once passed, it would seem that it is not in the power of Congress to repeal it.

In avoiding one series of difficulties, the courts have created another: up to 1901 it had been supposed that the general laws of Congress applied also to the District of Columbia and the territories; but if Congress may make a special tariff for Porto Rico, why may it not make one for New Mexico or for the District?

Although in principle there seems to be no difference between the power of Congress over the so-called "organized territories" and the unorganized dependencies, yet in practice it has set up for the "territories" a government with a representative assembly and a degree of personal rights not less than that in the states; and for the "dependencies" a government with appointive assemblies, or parts of assemblies, in which the people have not yet received all the personal rights guaranteed by the constitution. The status of our dependencies therefore seems to be almost exactly that of the American colonies just before the Revolution, when Parliament undertook to annul charters and to prevent the elective assemblies from meeting. Through its system of territories, and of special dependencies separated from the continent of North America by seas or broad oceans, the United States has taken a position in the world like that of other colonizing powers, such as England, France, Germany, and Portugal. The ground for the difference in government between the self-governing territories and the dependencies is substantially the belief of the American people that the latter are not yet fitted to be trusted with their own government; but in both Porto Rico and the Philippines it is hoped to create local governments, under the supervision of the territorial officers, which shall permit the participation of the people and lead to more complete local self-government.

168. Protectorates.

Like other colonizing nations, the United States has some protectorates, — that is, countries not in any sense within our

boundaries, yet so far under our influence that they are not completely independent. (1) The first of these is Liberia, founded on the coast of Africa by the American Colonization Society in 1820, under the virtual protection of the United States. The United States sends a minister to Liberia; and it has always been understood that no other power would be permitted to annex or seriously to molest it.

(2) Something very like a protectorate was exercised over the Hawaiian Islands, into which American emigrants went about 1820. Everybody understood for years that the United States would not permit any other power to annex or to administer Hawaii, and at various times, as for instance in 1852 and in 1893, attempts were made to annex it to the United States.

(3) From 1836 to 1845, by its very intimate relations with Texas, the United States practically exercised a protectorate over that nominally independent republic.

(4) From about 1882 to 1899 the United States was one of three powers to exercise a protectorate over the nominally independent government of the Samoan Islands, since divided among the three powers, Great Britain, Germany, and the United States.

(5) A curious kind of protectorate was exercised over Cuba from 1823 to 1898: the United States many times asserted the principle that no foreign power should be allowed to take Cuba from Spain, and even went so far as to promise Spain the protection of our fleet if needed.

(6) A distinct Cuban protectorate was established in 1898, when the United States sent an army to Cuba and compelled Spain to accept a treaty, ratified in February, 1899, by which Spain withdrew from Cuba but did not transfer it to the United States. For more than three years longer the United States remained in Cuba and kept up a military government. On April 18, 1898, just previous to the declaration of war, both houses of Congress united in a resolution that the people of Cuba "are and of right ought to be free and independent,"

and that the United States would leave the government and control of the island to its people. Hence the president aided the Cubans in framing a new constitution; but Congress laid down as a condition of our approval that in their new constitution the Cubans insert a promise not to enter into foreign relations without the consent of the American government, and to assign to the United States naval stations on the coast of Cuba. The relations between the two countries are such that the United States is bound to intervene to prevent any foreign aggressions, and is practically so far responsible for the continuance of good order in Cuba that it must intervene in case civil war should again break out in the island.

(7) An opportunity to exercise a somewhat similar protection in China arose in 1900, when there was a joint expedition of the Western powers up to Pekin to rescue the diplomats and missionaries who were there besieged. The United States distinctly set itself against a suggestion that the different powers should each take a piece of the Chinese territory, and was the main instrument in securing a settlement by which, on receipt of a money indemnity for their losses and expenses, the Western powers should withdraw their troops.

(8) In practice the United States exercises something like a protectorate over Mexico, not formally through the government, but by the influence of American capital there, which practically requires a guaranty from the Mexican government that good order shall be maintained and that property shall be respected. Should civil war break out in Mexico, it is probable that the United States would make a vigorous protest in defence of the property of its citizens.

(9) Two treaties have recognized the special protection of the United States over isthmus transit. The treaty of 1846 with the United States of Colombia agreed to guarantee to that country the possession of the Isthmus of Panama, and to maintain order on any land or water communication across the Isthmus; under this partial protectorate, troops have been repeatedly landed to protect the terminals and the line

of the Panama railroad. The Clayton-Bulwer treaty of 1850 asserted a joint guaranty of any isthmus canal by Great Britain and the United States; but it was formally rescinded, with the consent of Great Britain, in 1902. Negotiations thereupon began with the United States of Colombia as proprietor of the Isthmus of Panama, and with Nicaragua as proprietor of the Nicaragua Canal route, for possession of a strip ten miles wide extending from ocean to ocean, with the right to police and protect it. Such a relation would make of either canal route a protectorate, if not a dependency; and in keeping order over the canal the United States would be nearly certain to feel a responsibility for keeping order also in the adjacent country. The territory between the canal and the present southern boundary of the United States would also come into a similar relation with the United States; for no other country could possibly be allowed to take it or seriously to affect its destiny.

169. The Monroe Doctrine.

A further form of territorial influence outside the acknowledged boundaries of the United States is the principle of special and paramount interest in American questions, to some phases of which the term "Monroe Doctrine" is now applied. The original Monroe Doctrine, drafted by John Quincy Adams and inserted in the president's message of 1823, was a protest against two things: the attempt of Russia to occupy the Northwest coast, on the assumption that it was possessed by no other civilized power; and the attempt of France, in behalf of a European coalition, to interfere in Central and South America with the purpose of compelling the Spanish colonies to return to their allegiance to Spain. The first point of the Monroe Doctrine was that the whole continent of North America was already either occupied or claimed by other powers, and hence was not subject to further new colonization. This declaration against European intervention in America caused the plan to be dropped, and the only case

of such intervention since that time was that of the French in Mexico in 1860–67.

The Monroe declaration asserted a special interest of the United States in neighboring American countries; and hence, when other kinds of questions arose with regard to our American neighbors, it was thought useful to give the name Monroe Doctrine to protests really based on new reasons. Thus in December, 1845, President Polk said that the Monroe Doctrine included the principle of a balance of power in America; and in 1848 he declared that the Monroe Doctrine forbade any part of North America voluntarily to transfer itself to a European power.

The real principles of the Monroe Doctrine were put to the test in 1861, when a French army, taking advantage of the complications of the Civil War, invaded Mexico and set up a monarchical government supported by French bayonets, for the express purpose of impairing the influence of the United States in America. Secretary Seward nowhere distinctly referred to the Monroe Doctrine as his authority, but steadily protested with increasing force, till in 1867 Napoleon III took the warning and evacuated Mexico. President Johnson repeatedly referred to the Monroe Doctrine, and in 1868 insisted that we must annex some of the West India Islands in order to maintain it; and President Grant took the same ground with reference to the annexation of San Domingo.

About 1880 arose to magnitude a new American question, political and territorial, — namely, the question of an inter-oceanic canal across the American isthmus. Secretary Evarts in 1880, Secretary Blaine in 1881, Secretary Frelinghuysen in 1882, all insisted that the Monroe Doctrine gave the United States sole right to control such a canal, because the participation of European powers in such control would be an application of the European political system to America. This rather far-fetched doctrine did not prevent the actual beginning of a canal across the Isthmus of Panama by a French engineer; but the failure of the company in 1889, before the canal was

half finished, again brought up the question of the special interest of the country in that canal, and in 1902 the United States asserted undisputed authority to build, maintain, and police such a waterway.

In 1895 Secretary Olney and President Cleveland declared that the Monroe Doctrine extended to a boundary controversy between England and Venezuela, and urged that the Doctrine contemplated the extinction of all European colonies in America. This was not Monroe's meaning; and England in correspondence insisted that through her colonies Great Britain was also an important American power. The English possessions, however, are for the most part so distant from Central America, from the canal, and from South America that the United States must always be the main political force in that part of America.

In 1901–02 President Roosevelt and Secretary Hay came to an understanding with the German government that the Germans would attempt to make no national settlements in South America; and it is plain that there will be no further attempt to annex any part of Central or South America to any European power. To that extent the United States protects the country south of it, without, however, taking any responsibility for good or bad government in the neighboring American countries. In 1903 the United States made no protest against an armed demonstration and blockade by Germany, Italy, and England against Venezuela, in order to secure the adjustment of claims for injuries to the person and property of their citizens.

170. Colonial Problems.

The great extension of the territory of the United States since 1898 brings the country into new relations with the world, and a few of the main difficulties of the position may here be stated.

(1) By our possession of distant colonies having language, religion, customs, and problems unfamiliar to Americans, we

have taken up the position of a colonizing nation. Until 1898 we could point out the faults of the English in South Africa, of the French in Cochin China, of the Germans in East Africa, of the Spanish in Cuba; but Americans now understand that, in dealing by military power with an alien and distrustful people at a great distance, insurrection, brigandage, and cruelty of both races will break out in spite of efforts to prevent them.

(2) The annexation of an island in the West Indies, and of a group in the South Pacific, is evidence of an intention to take part in the development of the world's commerce both West and East. The main advantage of the Philippines is to give the Americans a point of vantage for the enormous trade which is expected to open up in Eastern Asia.

(3) The possession of colonies brings about many unforeseen complications in the government of the home country: we have one set of political principles for the people living in the states, another for the people living in organized territories, and another for the people living in dependencies. This is hard to reconcile with the belief of our forefathers that the great principles of the Declaration of Independence applied to all free people in all times.

(4) The administration of so many different kinds of territory is difficult, because it must include questions of taxation and of the regulation of trade. Goods may be sent from New York to any other state in the Union, and also to Porto Rico and Hawaii, without paying duties; but goods sent from California or Hawaii to the Philippines pay special duties on arrival in those countries; in like manner, imports from the Philippines into the United States, if the growth and product of the islands, pay three fourths the regular tariff duties. This necessary distinction produces friction and heart-burnings; it also involves the passing of laws to protect American industries against other American industries, — that is, against the labor and manufactures of our own dependencies. On the other side, it involves taxing those dependencies for the benefit of

trade with the home country, yet such discriminations are exactly what our ancestors protested against in the Revolutionary War.

(5) Another colonial problem is that of providing a proper civil service for those remote regions. The United States has exercised great care and discretion in the appointment of governors, both for the Philippines and for Porto Rico, and has provided an admirable subordinate service. Unless such a service is kept up, misgovernment and misery must inevitably follow.

Part VII.

Financial Functions.

CHAPTER XXI.

TAXATION.

171. References.

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172. Land Taxes.

Next in importance to territorial functions are the financial: without the expenditure of money no power requiring private lands, buildings, materials, stores, or land and naval forces, can be carried out. For all these outgoes, governments rely on four sources, — taxes, loans, fees, income from public property. The federal, state, and local governments have very little productive property, and the American theory of public debt is that it is something to be paid and extinguished; hence the usual reliance for the support of government is taxation.

Taxation rests in the inherent principle that governments have a legal right, in return for the protection and good order which they afford, to take such part of the annual product of the country, by imposing taxes payable in money, as may be necessary for governmental purposes. So long as people all

have about the same kind of property, — are all farmers, all artisans, or all sailors — it is not difficult to find a basis of taxation which will bear about equally on all the members in the community. In a complicated society like that of the United States, with many kinds of people and property, taxes are numerous and often inequitably distributed.

The most obvious subject of taxation is land, or rather real estate, which is land and the permanent structures resting upon it; in cities the buildings may be worth as much as the site, while the farm land far exceeds farm buildings in value. Throughout the United States, this is the main source of state and municipal revenue; but there are many kinds of land, from barren mountains to corner lots in Wall Street, and the land tax is full of inequalities and variations. Fortunately, the problem is simplified by the fact that the federal government has rarely exercised its constitutional authority to tax land. Direct taxes were assessed upon land in 1798, 1814, and 1861, but under the constitution they had to be distributed in proportion to population. Hence, for forty years there has been no federal land tax: it has been left to the states and municipalities, to which the land tax furnishes from three fourths to nine tenths of all their income.

Land is visible property, and hence cannot escape the assessors; land is valuable property, almost always finding a purchaser at some figure; the value of land can be estimated from the occasional sales of neighboring property; land is the absolute condition of all human existence, since every family must have ground under its feet: the weight of a land tax is therefore more widely distributed than any other form of taxation; and it is almost sure of collection, because unpaid taxes are a first lien on the land. One of the changes most ardently demanded by some tax reformers is to throw the whole taxation upon land, partly because of the ease of assessment and collection, partly because it is hoped in this way to gain for the public some of the advantages of the rapid increase of real-estate values in crowded communities.

173. Taxes on Personal Property.

In addition to land taxes, every state and city levies a variety of other taxes, the most common of which is the poll-tax, ranging from 30 cents in some states up to $3 in others. This is assessed on adult men; unless they are holders of other property, it is difficult to collect, even when payment is made a prerequisite to voting.

Personal-property taxes are assessed on visible personal effects, such as furniture, clothing, watches and jewelry, on machinery, animals, stocks of goods, ships, and other property not attached to land; and also upon money in hand and upon paper evidences of property. Since thousands of millions of dollars in the United States are held in the form of paper obligations — public securities, mortgages, corporation stocks and bonds, — most of the states attempt to tax such possessions as part of the wealth of the holders. Unfortunately, in most cases they are only evidences of visible property, which is taxed where it lies: a land mortgage is practically a temporary part-ownership in a piece of real estate; and railroad bonds simply represent the roadbed, stations, and rolling stock of the railroad, all of which are already subject to taxation. Such property is easy to conceal, and therefore hard to assess equitably, especially when the holders of securities feel that they are taxed double.

Another personal tax is on incomes; but few states make much use of their power to lay income taxes, although these exist in Massachusetts, Pennsylvania, Virginia, and North Carolina. The federal government has twice laid an income tax over the whole country: by acts of July 2, 1862, and June 30, 1863, 3 per cent was payable on all incomes exceeding $600 a year and less than $10,000, 5 per cent on incomes of $10,000 and over, and 10 per cent on incomes above $10,000. It was always an unpopular tax: first, because it could be fairly assessed only by detailed and unwelcome inquiries into the business affairs of wealthy men; secondly, because various

deductions were allowed, — for instance, all state and local taxes; in the third place, because evasion was easy and hence the tax very unequal. In 1866 this tax produced $61,000,000; in 1867, $57,000,000. The total proceeds were in ten years about $347,000,000, but this sum was paid chiefly by people in a few wealthy states. In 1872 the tax was repealed.

In 1894 the so-called "Wilson-Gorman Tariff Bill" somewhat reduced the tariff. To offset the loss of revenue, a second income tax was enacted, levying 2 per cent on the surplus of incomes above $4,000; receipts from interest on United States bonds and the salaries of United States officials were exempted. The act specifically included the net profits or incomes of most corporations, other than charitable and religious societies, savings banks, and insurance companies.

Before this tax was fairly under way its constitutionality was attacked, although the similar income tax of 1862 had been held valid by the Supreme Court. That court, in a decision of April 8, 1895 (*Pollock* v. *Farmers' Loan and Trust Company*), held unconstitutional that part of the act which taxed incomes from state, county, and municipal bonds, and incomes derived from real estate. The decision was based on the ground that a tax on the income from state bonds was equivalent to a tax on the state; it was influenced by the fact that state taxes on incomes from United States bonds had repeatedly been held unconstitutional. A tax on rent was held to be equivalent to a tax on land, and hence to be a direct tax.

The decision practically destroyed the unity and fairness of the act; and on May 20, 1895, on a rehearing, the court went still farther, and declared that a tax on income of any kind was a direct tax, which under the constitution must be assessed in proportion to the population of the state. Four judges dissented, but the act was invalidated; hence, in case of future need, the United States will be unable to make use of a form of taxation very common in other countries, very

elastic, very productive, and successfully tested during the Civil War.

Another form of property tax is the so-called "succession duty," a tax on legacies. It avoids most of the objections to an income tax; for the value is easily ascertained, since property which passes by inheritance or by will is ordinarily transferred through a probate court and is commonly inventoried and appraised; hence no new or unusual inquiry into the amount of the property is necessary. The tax is also subtracted before the property comes into the hands of a new owner, who thus feels the sacrifice less. Succession taxes have been laid in nearly twenty states, usually with exemptions for property transferred to blood relatives, for small estates, and for charitable bequests. Perhaps the heaviest tax is that of Missouri, varying from 5 per cent to $7\frac{1}{2}$ per cent, with very few exemptions.

By act of June 13, 1898, a similar tax was levied by the United States, running as high as 15 per cent. It was soon held by the Supreme Court not to be a direct tax, and proved productive, especially as there was no exemption of charitable bequests. In states which already had collateral inheritance taxes, the double duty, federal and state, was in some cases one fifth of the whole property transferred. In 1902 the federal tax was repealed, leaving the state taxes as they were; and duties collected on charitable, religious, and educational bequests were refunded.

174. Specific, Corporation, and License Taxes.

Among the forms of state and municipal taxation is the corporation tax. This is sometimes laid on railroads and other corporations owning large amounts of real estate which is otherwise not sufficiently assessed; but it is not suitable for corporations like banks and insurance companies, which have little real estate but do a profitable business. A favorite device is to lay a lower tax on corporations chartered by a state than on "foreign corporations," a legal term which includes

all corporations chartered by other states but doing business in the state concerned. This tax is ordinarily easy to collect; for the names and holdings of the stockholders are bound to appear on the corporation books, and the tax may be paid in a lump and withheld out of dividends to the stockholders. Another form of taxation, best represented by the New York Corporation Tax of 1899, aims to tax the money value of franchises which have been given to corporations by states or municipalities. In many cases, traction companies have issued millions of bonds representing the earning value of their lines, — that is, they capitalize the free use of the streets. The theory of the New York law is that the fact of the company's receiving this valuable advantage without cost is no reason why it should also enjoy the privileges of freedom from taxes such as are laid on other kinds of value.

Under the constitution, Congress has power to lay "direct taxes," provided they are proportioned among the states according to population. Five such taxes have actually been laid, — one in 1798, three during the war of 1812, and one in 1861; the first four acts made the assessment on slaves and land, the act of 1861 on land alone. In 1861 eleven states seceded from the Union and paid no part of the tax; hence on March 2, 1891, Congress by statute refunded the $20,000,000 which had been paid by the remaining states. It seems unlikely that Congress will again resort to a system of taxation which bears hardest on the poorer states.

Since 1789 the United States has levied a duty on the tonnage of ships, which are also subject to tax by the states as property. This duty ranges now from 3 to 6 cents per ton for each entry into port, up to 15 or 30 cents per ton per annum; it produces only about $500,000 a year. A similar tax of 50 cents per ton for "light money" goes to the support of lighthouses.

A very common form of state and national taxation is for licenses to carry on specified occupations. In some states, hawkers, newsboys, and street musicians must be licensed;

but the fee is small, and is intended only to keep the license-holder in bounds. Licenses are also required by auctioneers, insurance agents, brokers, commission merchants, inn-keepers, telephone companies, and many other occupations; in Missouri, department stores are heavily taxed for licenses. The most common subject of a license tax is the manufacture and sale of liquors.

175. Assessment and Collection of Taxes.

It is easier to classify taxes than to collect them: one of the most serious problems of government is to find out what taxable property exists, to state its value, and then to collect the tax that has been assessed; and neither state nor nation is absolutely free as to either the object or the rate of taxation.

The federal tax power is under serious limitations. The purpose of taxation is defined by a clause in the federal constitution that taxes may be laid "to pay the debts and to provide for the common defence and general welfare." Congress cannot tax state property, or (under the Pollock decision of 1895) tax incomes from state securities; it cannot tax the property of local governments of any kind, because that is really state property; it can lay "no tax or duty . . . on articles exported from any state"; and "all duties, imposts and excises shall be uniform throughout the United States." These export and uniformity clauses gave rise to the difficult questions as to the taxation of dependencies decided in the Insular cases of 1901: the Supreme Court practically held that these two limitations did not apply except to regions organized as states in the Union.

Many state constitutions prescribe that taxes shall be laid only for public purposes, or that the annual state or municipal tax rate shall not exceed a certain proportion of the whole private property: in Texas, for example, only one half of one per cent can be levied for state purposes. By the federal constitution, the states are forbidden to lay either import or export duties; this means that they cannot lay any kind of discriminating taxes on imported goods as such.

Whenever, as frequently happens, the state and nation tax the same thing, the United States always comes in first, if there be any dispute. Under Supreme Court decisions, the states cannot tax any national property or national securities, or the income from national securities or national banks, though they may tax bank property on the same footing as other property; and they cannot lay any tax on commerce from one state to another, because Congress alone has power to "regulate commerce . . . among the several states."

One result of the various limitations on taxation is that it is practically impossible either for states or for the nation to levy any duties on the movement of persons and commodities from one state to another; hence nowhere in the world, except perhaps in the Russian empire, is there so large an area in which there is absolutely free trade unfettered by protective or revenue duties.

The problem of discovering taxable property is often perplexing. Real estate can hardly fail to be listed in any honest system of assessment. Occasionally backwoods farms, islands, or pockets of the mountains may escape notice; but in the cities, where the valuable real estate for the most part lies, there are elaborate maps in which the parcels appear. It is possible to assess property to the wrong person, but the remedy is easy: he may simply decline to pay the tax.

The discovery of personal property is usually attempted by sending an elaborate list like that in the illustration, in which the owners of property of many different kinds are required under oath to set forth what they own. Furniture, books, personal effects, stocks of goods, carriages and other vehicles, and draft animals, are not very difficult to find if assessors take sufficient pains. To discover the amount and whereabouts of evidences of property, — as notes of hand, mortgages, stocks and bonds, especially shares in corporations, — is extremely difficult, without such inquisitorial methods as are practically out of the question in a democracy. In practice it is found hard to get these descriptive lists back from tax-payers, and

Auditor's Form No. 1.

SEE ASSESSORS' NOTICE ON THE BACK OF THIS SHEET.

Before commencing to fill out this Schedule, read carefully the INSTRUCTIONS TO PERSON LISTING, and the EXTRACTS from the REVENUE LAW printed on the reverse of this Sheet.

A Schedule of the numbers, amounts, quantity and quality of all Personal Property in the possession or under the control of _____ *belonging to* _____

on the first day of April, 1902, as listed by _____ *of the Town of* _____

in the County of Cook, and State of Illinois.

Town _____ *School District* _____ *T.* _____ *R.* _____ *Village (or City) of* _____

To Be Filled by Person or Persons Required to List Personal Property.							
1	2	3	Warrant No.	Schedule No.	4	5	6
No.	Full Fair Cash Value	Quality and Quantity, Description, Memoranda as to Quality, Face Value, Etc.			ITEMS OF PROPERTY.	Full Value (as determined by Assessor).	Assessed Value (fixed by Assessor).
			1	1	Horses of all ages,		
			2	2	Cattle of all ages,		
			3	3	Mules and Asses of all ages,		
			4	4	Sheep of all ages,		
			5	5	Hogs of all ages,		
			6	6	Steam Engines including Boilers,		
			7	7	Fire or Burglar-Proof Safes,		
			8	8	Billiard, Pigeon-hole, Bagatelle, or other similar Tables		
			9	9	Carriages and Wagons of whatsoever kind,		
			10	10	Watches and Clocks,		
			11	11	Sewing or Knitting Machines,		
				12	Piano Fortes,		
			12	13	Melodeons and Organs,		
		Yearly Gross Income, $	13	14	Franchises,		
		Yearly Gross Income, $		15	Annuities and Royalties,		
			14	16	Patent Rights,		
			15	17	Steamboats, Sailing Vessels, Wharf Boats, Barges or other Water Craft,		
			16	18	Merchandise on hand,		
			17	19	Material and Manufactured Articles on hand,		
			18	20	Manufacturers' Tools, Implements and Machinery (other than Engines and Boilers, which are listed as such),		
			19	21	Agricultural Tools, Implements and Machinery,		
			20	22	Gold and Silver Plate and Plated Ware,		
			21	23	Diamonds and Jewelry,		
		Being the Net Amount as per Special Statement	22	24	Moneys of Bank, Banker, Broker or Stock Jobber,		
		Being the Net Amount as per Special Statement	23	25	Credits of Bank, Banker, Broker or Stock Jobber,		
			24	26	Moneys of other than Bank, Banker, Broker or Stock Jobber,		
		Being the Net Amount as per Special Statement	25	27	Credits of other than Bank, Banker, Broker or Stock Jobber,		
		Face Value being $	26	28	Bonds and Stocks,		
		Face Value being $	27	29	Shares of Capital Stock of Companies and Associations not Incorporated by the Laws of this State,		
		Being Amount as per Affidavit	28	30	Pawnbrokers' Property,		
			29	31	Property of Companies and Corporations other than hereinbefore enumerated,		
			30	32	Bridge Property,		
			31	33	Property of Saloons and Eating Houses,		
			32	34	Household or Office Furniture and Property,		
			33	35	Investments in Real Estate and Improvements thereon (see Sec. 10),		
			34	36	Grain on hand		
			36	37	Shares of Stock of State and National Banks		
			35	38	All other Personal Property required to be listed		
					Totals,		

I do solemnly swear that the foregoing is a full, complete and correct Schedule of all the personal property subject to taxation in the county, town, city, village and school district above mentioned, owned by me, or controlled by me as agent for _____ on the first day of April, A. D. 1902, and which I am by law required to list; that the numbers, quantity, quality and amount of each item so listed are correctly stated; that the values of the several items of property, as by me stated (in column No. 2), are the full fair cash values of the same, as I verily believe; that I have stated the full amount of my moneys and of my credits (less deductions authorized by law), and that I have correctly stated the full fair cash values, and the face values, of all bonds, stocks and shares of capital stock in companies or associations not incorporated by the laws of this State, by me owned or controlled.

Remarks: _____

(See Sec. 20, Act Approved Feb. 25, 1898.)

Subscribed and sworn to before me, this _____ day of _____ 1902.

_____ Assessor.

AN ASSESSMENT BLANK

in such cases assessors commonly estimate the amount of personal property. In some states there is a penalty for failure to make return; sometimes assessors are authorized to guess at the amount of property, and then to double their guess for the schedule. In either case the tax-payer feels no responsibility until the assessment reaches what he thinks an unreasonable point, when he usually enters protest; hence it is not uncommon to keep raising the assessment of a man until he "squeals."

The next great difficulty is properly to assess the value of property when discovered. Real estate is subject to great fluctuations both down and up: prosperous farms in New England have been abandoned; city property in Chicago may go up from $100 to $1,000,000 an acre, but it is also subject to depreciation by movements of trade and fashion. Who shall estimate the changes of value? The usual officials are the assessors of the towns or counties or cities. In most parts of the United States the assessorships are elective offices, with tenures of one year, or at best three years, so that inexperienced men get in; and the most skilful assessors will make mistakes. In some large cities, notably Chicago, the variations in real estate are often corruptly affected: sometimes a wealthy holder of real estate pays an agent a fixed sum per year to keep his assessment down. Everywhere the small man, the owner of a little home, the farmer with a definite number of acres, is likely to be relatively more heavily taxed than the wealthy man.

Real estate is taxed where it lies; but it is becoming more common for wealthy holders of stocks and bonds to diminish their taxes by acquiring residence where taxes are low, in country houses or estates. In Massachusetts, taxes are assessed on the first day of May, hence many people go away for the summer on the 30th of April. Another method of dodging personal taxes is by making temporary investments in government bonds, and then selling them out after the assessment has been made; or by putting property into the hands of

trustees resident in other states under a low rate of taxation; or, more frequently, by simply ignoring the whole subject.

The usual principle of assessment is that property shall be estimated at what it would bring in cash on a forced sale, which is commonly from one third to three fourths of the selling value which the owner would put upon it; but in many places the assessed value is very near the purchase price of new property. Inasmuch as many investors are glad to get 3 per cent net on investments, a tax of 2 per cent or 2½ per cent or 3 per cent on actual values must in the long run ruin the owners, and thus destroy taxable values and deprive the community of one of the main incentives to saving.

Ohio in 1885 enacted a system of tax inquisition which authorized two brothers to discover, in any way that they could, property which had escaped a sufficient assessment, they to have one quarter of all that they brought into the state treasury. This extraordinary system resulted in the discovery of some hundreds of thousands of dollars' worth of taxes that had been overlooked; but it was widely believed that many delinquents came to terms by paying the inquisitors lump sums which did not get into the treasury.

Small amounts of personal property are usually not taxable, and certain property owners are legally exempt from all taxes. In most states the real estate belonging to religious, educational, and charitable institutions is free of tax; and in some states invested funds belonging to such corporations are exempt. This is not a universal principle: in California all the colleges except the State University and Stanford University are or may be taxed; in New Hampshire church buildings worth more than $10,000 are taxed. In some university cities, such as Ithaca, New Haven, and Cambridge, the amount of real estate thus exempt is considerable, and there is jealousy of the institutions of learning because they have the free benefit of streets and of police and fire protection. In Maine, the state appropriates certain sums to the towns in which colleges are situated, in recognition of this supposed loss. In Mas-

sachusetts, the 194 towns which have no colleges show little disposition to tax themselves more highly in order to relieve the 6 unfortunate places which have colleges in their midst.

The work of assessors is entered upon a book commonly known as the "tax-duplicate," which should show not only the taxed property but also the exempted property. The rate of taxation is found by dividing the amount necessary to raise by the total of assessable property. There may be two, or even three or four, kinds of taxes in the duplicate. The state tax is commonly not more than $\frac{1}{5}$ per cent to $\frac{1}{3}$ per cent on the assessed valuation; the town or city tax in some communities is as much as $2\frac{1}{2}$ per cent on the valuation; in addition, there may be county taxes, school taxes, and special assessments for sewers, waterworks, and other improvements.

A peculiar form of tax is the so-called "betterment tax." If a new street is laid out, for instance, the real estate in the neighborhood may have assessed upon it a part of the cost in proportion to the supposed benefit. These sums are not strictly taxes, but for convenience are assessed and paid with the real taxes.

The ordinary method is to have all these taxes combined in one annual bill, which is payable in either one or two instalments. This combined system sometimes makes very high rates of taxes: in Cleveland, for instance, in 1901, the tax rate was 3 per cent; in Boston a total of 1.6 per cent was thought extravagant; and in some New England country towns the rate was as low as $\frac{1}{2}$ per cent, or $5 on the thousand.

When tax bills are rendered, the next difficulty is to collect them. If proper care is taken, land taxes will be collected, through the wholesome system which makes taxes a first lien upon real estate, supplemented in most states by charges for interest after fixed days. Personal property, however, may change hands or be taken out of the state before any tax is collected; and, unless the tax-payer is also a real-estate owner, he may move away and cannot be found. Delinquent

taxes, therefore, accumulate wherever much reliance is placed upon personal taxes; and in some places officials let them run because they get special fees for the collection of delinquencies.

License taxes are paid at the time the licenses are taken out, and those who neglect this form of tax are subject to arrest for attempting to carry on a trade without the requisite permission. Federal tonnage taxes are laid on vessels in harbor, which cannot legally leave port till the taxes are paid. The direct tax on the states proved very slow of collection, and arrears kept dropping in for years after the tax had ceased.

The most serious defects in the American tax system are as follows: — (1) The reliance on personal taxes, which never can be properly and impartially assessed. In repeated instances, a personal estate assessed at $1,000,000 or $2,000,000 has proved on the death of the holder to be subject to a succession tax on $20,000,000 or $30,000,000. (2) The inequality of assessment, which results partly from lack of a proper system of state assessors not subject to local influence, and partly from the inherent difficulty of knowing the real value of changeable property. (3) The multiplicity of state and local taxes, with the result that some callings and individuals carry disproportionate loads of tax. The fair and thorough collection of taxes is always easier in the so-called "indirect" taxes on consumption.

176. History of the Tariff.

Two forms of indirect tax, import duties and internal revenue, are the main sources of federal income. The import duties have been the more productive, and are also important because they involve protection to domestic industries. Within the colonies, small duties on imports were laid by the British government, and somewhat larger duties were laid by the colonies themselves. Immediately after the Revolution the states began to lay import duties each for itself; and two

constitutional amendments to the Articles of Confederation, intended to give Congress also power to lay light duties for national purposes, failed of ratification. Between 1783 and 1788 three states, Massachusetts, New York, and Pennsylvania, framed general tariffs intended to discriminate against the products not only of foreign countries but of other states. The result was confusion and interstate jealousy.

The Federal Convention in 1787 completely withdrew from the states all control over import duties, except over inspection duties levied with the consent of Congress. From the beginning it was expected that this exclusive power of taxation would furnish the United States with the greater part of its revenue, and that expectation has been justified. In the first full year, 1792, the customs produced $3,500,000; in 1808, $16,000,000; in 1816, just after the War of 1812, $36,000,000, a figure which was not reached again till 1850; in 1866 the war tariff produced $179,000,000; in 1902 the customs paid $254,000,000, the highest amount in the whole history of the country in any one year.

Customs tariffs are made by acts of Congress, although they may be modified by treaties duly ratified by a two-thirds vote of the Senate. Scores of acts have been passed on the assessment and collection of tariff duties and the organization of the customs service; but the so-called "tariff acts" have been those which involved a complete revision of the previous classification and rates. The first of these statutes was the act of 1789, which was intended to be protective, although the highest rate of duty was not above 15 per cent. In 1816 a distinctly protective tariff was set up, intended to sustain the young manufactures, especially of cotton and wool. In 1824 the duties were somewhat increased. In 1828, under the so-called "tariff of abominations" the duties were raised to a hitherto unexampled height, reaching in some cases 45 per cent. In 1832 duties were somewhat reduced, but the tariff system was continued. This led to the Nullification controversy with South Carolina, and in 1833 the Compromise

Tariff provided for the gradual reduction of duties to a 20 per cent basis. In 1842 the tariff was increased for revenue purposes. In 1846 the lowest scale of duties was adopted that had been known since 1816, and these duties were a little lowered under a revision of 1857. Then set in a current of protection, resulting in the tariff of 1861, repeatedly modified by later war duties; gradually after 1866 many parts of the war tariff were struck off. In 1883 there was a general revision of the tariff, which was intended to lower the duties, but really raised them. In 1890 the McKinley Tariff raised duties to the highest figure experienced up to that time. In 1894 the Wilson-Gorman Tariff, while still highly protective, considerably reduced duties. In 1897 the Dingley Tariff again increased duties, in many cases above the McKinley rate.

It is difficult to know precisely what the protective effect of a tariff may be, because all the recent tariffs include many compound duties, — that is, duties made up in part of a specified rate (so much a pound or a yard), and in part of an ad valorem rate (so much on each dollar's worth of goods). For instance, the Dingley tariff on velvets is $1.50 per pound, plus 15 per cent ad valorem; on clothing, 44 cents per pound, plus 60 per cent ad valorem; on hats, from $2 to $7 per dozen, according to quality, plus 20 per cent ad valorem. Leaving out of account the free list, and comparing the receipts from duties with the total value of dutiable imports, the average rate of duty in 1841 was about 23 per cent; in 1847, 22½ per cent; in 1860, 19 per cent; in 1868, 50 per cent; in 1882, 44 per cent; in 1891, 47 per cent; in 1901, 50 per cent. These average figures are much under some rates of duty: on carpets the present duties are about 80 per cent; on blankets, about 100 per cent; on potatoes, about 70 per cent. Many duties are so high as to prevent importation altogether, so that there are no figures from which to calculate the effect.

No act is more difficult to draw up than a tariff, because of the great number of interests affected. Until about 1846

the tariffs were usually made by special committees; thereafter by standing committees, in which the minorities were represented. The tariff of 1883 was framed by a special commission, but was very much altered as it went through the process of enactment. Since that time the tariffs have been made by the majority members of the Ways and Means Committee without consultation with the minority members, and usually take the name of the chairmen of that committee, as the McKinley Tariff, the Wilson Tariff. Sometimes, while the Ways and Means Committee is at work, the Senate managers also prepare a bill, to be substituted when the House bill appears. The committees of both houses commonly hold public hearings, and also confer with representatives of the interests affected; and in some cases manufacturers prepare parts of the text of the bill, which are afterwards incorporated. Consumers and importers are usually not encouraged to appear before committees.

On the three last general tariffs of 1890, 1894, and 1897, there was little genuine debate in the House. Hundreds of amendments were filed, but no vote could be reached upon them, because a tariff is a delicate adjustment between conflicting interests, and to strike out a duty here and add another there may raise up unexpected elements of opposition. The Senate cuts and slashes the House tariff bill, usually in the direction of increase of duties. The differences between the two houses are then submitted to a conference committee, and that body of six men practically frames the final tariff, often inserting items which have been approved by neither house. The work of the conference committee is then accepted by both houses, and thus a new tariff comes into being.

No tariff is long satisfactory, even to its friends: changes in the methods of doing business alter the effect of the act; and the tariff cannot make everybody prosperous. For instance, the discovery of a new process for making steel in the sixties revolutionized the making of rails and structural iron, so that the old tariff did not correspond to the situation.

There is no magical power in a tariff to compel buyers to purchase, and the high rate of duty which cuts off the importation of a foreign article may raise the price to such a point that consumers find a substitute: thus, the very high rate on woollen cloths since 1890 has led to a much wider use of cheap woollens with admixture of cotton and shoddy. Hence, as soon as a tariff is fairly passed, appeals are made to modify it, not only from those who wish to reduce the rates, but from the protected manufacturers who find themselves disappointed. Since 1883, Congress has been chary of tariff bills dealing with partial fields, because to alter one part of the tariff may bring on a general tariff discussion.

The following table shows the value of some of the principal articles imported during the fiscal year ending June 30, 1901, the duty on them, and the percentage of duty, arranged in order of magnitude of the duty collected:

Article.	Value.	Amount of duty.	Per cent of duty.
Sugar and molasses	$87,004,000	$63,022,000	72
Cotton manufactures	39,774,000	21,827,000	55
Wool and manufactures of	30,727,000	21,575,000	70
Tobacco and manufactures of	15,056,000	16,656,000	110
Silk manufactures	26,836.000	14,246,000	53
Fibres and manufactures of	34,637,000	12,908,000	37
Liquors	13,028,000	9,121,000	70
Iron and steel and manufactures of	18,319,000	6,988,000	38
Leathers and manufactures of	11,682,000	4,104,000	35
Hides of cattle	14,872,000	2,231,000	15
Jewelry and precious stones	16,490,000	2,143,000	13

177. Administration of the Tariff.

In practice, the workings of a tariff depend very much on its administrative features, which come too little into public attention. At the head of the system is the secretary of the treasury, who, more than any other member of the cabinet, is subject to definite and specific acts of Congress. One of the assistant secretaries is in general charge of the customs department. The whole country is divided into about 120 collection districts, in each of which there is a collector; some of

them have surveyors, and 6 have each a third official, known as the "naval officer," although he is simply the head of the accounting department. Subordinate to the collector are the surveyor, the appraisers, and a staff of clerks, examiners, inspectors, watchmen, storekeepers, and the like.

The 120 districts differ much in the importance of their business. The port of New York receives about two thirds of all the imports, and the ports of Boston, New York, Philadelphia, Baltimore, New Orleans, and San Francisco do about nine tenths of all the business. The port of Annapolis, Maryland, in 1891 collected $43.50, at an expense of about $1,000; the port of Burlington, New Jersey, collected $1.25, at a cost of about $200; the port of Cherry Stone, Virginia, collected nothing at all, at a cost of over $2,000. Such small districts ought to be consolidated with the neighboring districts; but it is difficult to bring about the discontinuance of a United States office. In the large ports the collectors are paid by salary, the highest being $12,000 to the collector of New York; in the small districts, they have fees and small salaries.

Two systems of levying duties have prevailed from the beginning of the government, — the specific (so much a pound, yard, or dozen), and the ad valorem (so much on each dollar's worth of goods). The advantage of the specific system is that it is simple and easily administered: you have but to weigh and count and your task is done. On the other hand, the specific duty always rises as goods become cheaper: a duty of $6 per ton on steel rails would be about 15 per cent when rails were $40 a ton, but it would be 30 per cent when they fell to $20 a ton.

The ad valorem duty, while more stable, is a constant incitement to fraud: if the dutiable value can be understated, the duty is lowered by that much. Even where there is no fraud, it is customary for heavy importers to have houses on both sides of the Atlantic: Jonas Brothers in Nuremberg ship toys to Jonas Brothers in New York, and make the invoices on which values are calculated, without including the profit.

To counteract this tendency Congress has made many statutes, the most effective of which was passed October 1, 1890, separately from, though during the same session as, the McKinley Tariff, and amended in 1897; it is known as the Administrative Tariff Bill. This act provides that goods must be billed at the "customary market rates" in the place where they are produced or ordinarily sold abroad, and that the invoices must be certified by an American consul. Such certification, long a part of the system, is almost always a matter of form, and does not protect the government. Every vessel arriving in an American port must have a "manifest," showing every article of the cargo; and the importer must send to the government duplicates of the invoices for his goods. It then falls to the appraiser's office in each port to examine the goods, to see that they correspond with the invoices in quantity and quality, and that they are stated at their true values.

The appraiser's work is the most delicate in the whole system. By the act of 1890 was created a body of general appraisers, drawing salaries of $7,000 a year. A board made up of three of these appraisers has a final decision on the value of imported goods: from them no appeal can be taken, either to the secretary of the treasury or to the courts. Next comes the question in what category of the tariff act the goods shall be placed. Notwithstanding the hundreds of items in tariff acts, articles are frequently imported which are not distinctly mentioned in them. What is a flying machine, for instance? Is it personal baggage, or a carriage or a tool of trade? or is it a manufacture of steel, or a manufacture composed partly of steel and partly of silk? Such questions are decided by a board of three of the appraisers, but with an appeal to the courts. Importers frequently pay duties under protest, and bring suit against the government for refunds, on the ground of wrong classification; they have sometimes recovered millions of dollars by such suits.

Passengers arriving at a port are entitled to carry their personal possessions through the custom-house by a much

shorter and more expeditious process. Before landing, the passenger makes a declaration of the dutiable goods in his possession; on reaching the docks his trunks are examined, and he pays duty on what he has declared; if other dutiable goods are found, they may be seized if there seems to have been an attempt to smuggle them, or he simply pays the duty. There are many annoyances incident to this examination, and many charges that inspectors accept bribes for passing baggage. For many years passengers were allowed to bring with them wearing-apparel "appropriate for the purposes of their journey and present comfort and convenience"; by the Dingley Act of 1897 the value of such clothing is limited to $100 in case of returning residents of the United States. There is no reason why passengers should have any greater immunity than other importers; and the Treasury has by recent orders attempted to put an end to evasions and fraud, by holding that the $100 worth of free goods may include small purchases other than clothing; those orders, however, have been held invalid by a recent decision of the Board of General Appraisers.

178. Excise and Internal Revenue.

In most governments of the world, malt and spirituous liquors and tobacco are among the important objects of taxation, because they are abundant, widely diffused, easy to reach, and are either counted among luxuries or discouraged as harmful. Imported wines and liquors of high cost are also subject to tax as luxuries used chiefly by the rich, and are productive of large revenue; hence most tariffs, among them that of the United States, have high duties on the importation of alcoholic beverages and tobacco.

The actual cost of crude spirits, especially with modern scientific apparatus, is not more than 25 cents a gallon; peach brandy, apple-jack, and rough corn whiskey may easily be manufactured by farmers and others with inexpensive apparatus, and were so manufactured in considerable quantities in

colonial times. What more apt and convenient source of taxation than on the manufacture and sale of such liquors, and of the milder malt liquors and wines? During the Confederation, several states, especially Pennsylvania, laid such a tax.

By the constitution, Congress had specific power to lay "excises," and it was part of the financial scheme of Alexander Hamilton to frame a whiskey tax for federal purposes. By act of March 3, 1791, the first federal excise was laid, in the form of a tax of from 9 to 30 cents a gallon on the manufacture of distilled liquors, or a yearly tax of 60 cents per gallon capacity on small country stills. This tax was very unpopular, and required disagreeable methods of collection; and it cost about one fifth of its gross amount to collect it. In 1794 popular opposition in Western Pennsylvania led to the so-called "Whiskey Rebellion."

The tax was never so productive as had been hoped, although in 1800 it brought in $1,000,000. Jefferson's first Congress repealed it in 1802. In 1813 it was revived, together with a license tax on retail dealers; and it produced $15,000,000 during the four years that it was levied. In 1862 it was a third time introduced, and has ever since been a part of the revenue system.

The excise has not been repealed, both because it is productive and because it is evident that repeal would so cheapen liquor as greatly to increase its use. Since 1890 it has almost equalled the receipts from customs; and during the three fiscal years of the Spanish War tax, 1899–1901, it averaged about $300,000,000, or $70,000,000 a year more than the customs; of this amount $108,000,000 came from spirits, $58,000,000 from tobacco, $73,000,000 from fermented liquors. In 1861 it cost about 24 cents a gallon to make untaxed whiskey; in 1865 the tax was $2 a gallon, producing about $16,000,000; in 1868 the duty was lowered to 50 cents a gallon, and in two years the proceeds rose to $55,000,000. The reason was that the high duty gave an impetus to illicit

and fraudulent distillation: even under the present low duty there are numberless stills in the mountain regions of the South, where "moonshine whiskey" is made. At present the rate of tax on beer is $1.00 per barrel; on spirits, $1.10 per gallon; on prepared tobacco, 6 cents per pound; and on cigars and cigarettes, 54 cents to $3.00 per thousand.

Classed in the government reports with internal revenue are various other forms of taxes. In 1794 Congress laid a carriage tax of from $2 to $15; and in the case of *Hylton* v. *United States* the Supreme Court held that the tax was constitutional, because an indirect tax. In the same year taxes were laid on the manufacture of sugar, snuff, and on retail sales of spirituous liquor. In 1798 began stamp taxes on legal instruments. All these taxes were repealed in 1802, but nearly all of them were again imposed in 1813, ceased in 1817, and were laid for the third time in 1862. By a series of acts during the Civil War, Congress tried to reach every kind of manufacture and of trade: licenses were required for all sorts of pursuits; a stamp tax was laid on almost every written evidence of commercial transaction; and these taxes were especially productive in the two or three years after the war closed. Gradually most of such taxes were removed: the two-cent duty on bank checks was repealed in 1883, but four years later a new form of tax was laid on the production of oleomargarine. In 1898, when the Spanish War broke out, many of these taxes were again imposed, including the tax on bank checks; but in 1901–1902 all the stamp duties and other war taxes were withdrawn.

Since the Civil War, the normal national revenue in the United States has been made up of about one half customs receipts and one half internal taxes on alcoholic beverages and tobacco. In time of war or other financial stress, the government resorts to a great variety of manufacturing, license, and stamp taxes; but people do not like them because they are an inconvenience as well as a money sacrifice, and Congress hastens to withdraw them as soon as possible.

An additional tax is placed upon the liquor business by United States licenses, which are required from both wholesale and retail dealers, and range from $200 to $20 a year. Even where states prohibit the sale of liquor altogether, dealers take out United States licenses. In most states there are likewise state or local taxes on all dealers, such annual taxes varying from a few dollars up to $2,500 in New York City. Sometimes these taxes are assigned to the city government, and form a considerable item in the year's receipts; but no American state has gone to the length of the Swiss constitution, which provides for a liquor tax, a part of the proceeds of which shall be spent in combating the evils of intemperance.

179. Amount and Incidence of Taxation.

Although the kinds of taxation and the methods of their distribution much affect the welfare and productiveness of the country, and although plenty of people find it hard to raise the money to pay taxes, yet the United States is by far the lightest-taxed of all great countries. One reason is that almost the whole burden of taxation is indirect: the happy possessor of a new suit of clothes, the laborer puffing at his pipe, is paying a part of the tax in the higher price on his purchase. Yet the total burden of national expenditures in 1901 was only $6.56 per head of the population, while the burden in France was $17 per head; in England, $19.18; in Germany, $12.

This comparison is misleading, because in those three countries a large part of the local expenditures are borne out of the national treasury. For an accurate idea of the burden of taxation in the United States, we must add the taxes laid by states, counties, cities, boroughs, towns, school districts, sewer districts, and other subdivisions. This difficult task, involving the assembling of the reports of forty-five states, four territories, 1,000 organized cities and villages, perhaps 2,800 counties, and several thousand towns, is being done for a supplementary volume of the last census.

The state tax is almost everywhere the lightest item, often not more than a dollar or two per head of the population. In 1901 the New York State tax was about 94 cents per head: the South Carolina tax about 70 cents. Local taxes vary enormously: Boston, with 600,000 people, pays about $20,000,000 of annual tax, an average of about $35 per head; Greater New York, with about 3,500,000, pays $100,000,000, or $30 per head; in some of the Southern and Southwestern states, the local tax is not more than half a dollar a head annually. Mr. Edward Atkinson estimates that the average state and local tax is about equal to the national tax, making a total average tax of about $14 per head of the population. Comparing this with the taxes of England, Germany, and France, it will be seen that our total governmental burden does not equal the average of national taxation alone in these European states. At the same time the United States is a very prosperous nation, with an annual product twice as great per capita as in Germany, and the tax does not take up more than one fourth of the annual national savings; while in some parts of Italy the tax-gatherer gets in cash more than a fourth of the gross money income, to say nothing of savings. This comparative lightness of taxation is one of the reasons for the great commercial activity in America.

The question just who pays the taxes in the long run is puzzling to skilled economists. Plainly, the owner of rented land and buildings expects his rent to cover both interest and taxes; so that the occupant who owns no landed property cannot help paying a tax on land. The importer of merchandise and the brewer of beer redistribute the taxes which they pay, by adding to their selling price. The holder of a mortgage covenants with the mortgagee to pay the tax, or else he adds enough to the rate of interest to make himself good. In the long run, taxes are widely distributed, but are apt to fall with most severity upon the poorer part of the population: (1) because, if they have taxable property, they cannot hide their little house, work-animals, or savings-bank deposits;

(2) because they pay most of the tax unconsciously through increased prices; (3) because there are so many more of them that their gross burden is vastly greater than that of well-to-do people. The inequality of taxation is enhanced by the greater ease with which the rich man may change his residence or form of investment, to avoid heavy taxation. A large part of the national taxes fall on the middle classes in America, — on professional men and women, teachers, and the higher artisans. A family with an income of $2,000 a year, paying taxes on a house assessed at $5,000, pays from $50 to $150 a year outright on real estate, and anywhere from $100 to $300 by the indirect effect of local and national taxes.

Taxation is the price which civilized communities pay for the opportunity of remaining civilized. If the whole twelve or fifteen hundred millions of dollars raised annually in taxes in the United States were every year thrown into the sea, the country could well bear the loss, if it still had peace and good order: a year of civil war would cost more than ten years of peace taxation. A large part of the money from taxes goes into direct protection of society, — into police, firemen, militia, the army and navy; a part into indirect protection, such as education and the improvement of the community. A part goes into permanent buildings and improvements; a large part goes into salaries of people who keep the accounts; and a considerable fraction, probably from one third to one fourth of the whole amount, goes without any return, because spent injudiciously or extravagantly, — a waste which is so much subtracted from the productive powers of the nation. Nevertheless, as yet only a small fraction of the total earnings, or even of the total savings, of the people is absorbed in government expenditures which confer no benefit on the community.

CHAPTER XXII.

PUBLIC FINANCE.

180. References.

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181. Public Property.

Although the governments in the United States are the heaviest real-estate owners, their holdings are with few exceptions unproductive, and of course pay no taxes. The public lands are held only until somebody comes along who wants to buy them; national, state, municipal, and local parks yield no revenue, and are a constant source of expense. Almost the only revenue-producing public properties are the docks in a few cities, and the water-works, gas-works, and electric systems of cities which own their own plants. State and national forests properly managed may also eventually become a source of moderate revenue. South Carolina has a state monopoly of the liquor business.

Like a corporation, a prudent government must keep a working balance of money in hand. The United States has repeatedly seen that balance grow against its will, and various means have been adopted for getting it out of the vaults and into circulation. From 1791 to 1836 (with the exception of the years 1811–1816), the national balances were deposited chiefly in the Bank of the United States; from 1833 to 1841, in selected state banks; from 1841 to 1862, in the vaults of the government. Since 1862 some parts of the balance have been kept in national banks, the greater portion in the custody of the treasury. The highest annual accumulation of surplus was $146,000,000 in 1882. Although political favor always plays some part in the selection of banks of deposit, it does not appear that any officer of the United States has ever profited by placing public deposits.

State, county, and municipal balances are, however, frequently deposited in banks, on an agreement that the treasurer or other custodian shall receive interest for his private profit; and heavy losses have many times occurred because the treas-

urer chose the bank that would promise large interest instead of large safety. If any advantage is to be got out of public deposits, it ought to go to the public; state and county treasurers ought to have salaries adequate for their duties, so that there should be no excuse for this dangerous practice. Cases have been known where the school-teachers of a state went unpaid for months, in order that the state treasurer might draw interest on money that really belonged to them.

The general government and the state governments always own considerable amounts of military and other materials and supplies; and the federal government owns the ships of war, often costing millions of dollars each. Some cities own floating fire-engines, and transfer and ferry boats. The furniture of schoolhouses and other public buildings, and the fittings of state institutions, are either state or municipal property. The federal government has a searching system of record of its property, and loses comparatively little. States and municipalities are more careless, especially in the sale of disused materials, and sometimes are subjected to gross frauds. An instance during the Spanish War was the sale, by some state officials, of military clothing belonging to the state for $40,000, and its repurchase on state account for over $100,000. The various governments frequently own working animals, from the army mule to the powerful fire-engine horse.

A few cities have attempted to acquire the street-car lines within their borders; and, although none have yet succeeded, the cities of Boston and New York have constructed costly subways, which remain the property of the city and are leased to operating companies. For nearly forty years the United States owned mortgages in certain Pacific railroads; and many states in early days either built or took stock in canals and railroads, and a few relics of such ownership still exist. The United States is about to begin the construction of a canal across the American isthmus, which will remain national property. It has been too common for local governments of every kind — cities, towns, and counties — to give or lend money

to railroads which were to run through their boundaries; hence many of the state constitutions absolutely prohibit the use of public credit in any form for such enterprises. In 1873 Cincinnati got round a prohibition of this kind by building the Cincinnati Southern Railway, in which the municipality is the sole owner, at a prime cost of about $19,000,000.

182. Public Budgets.

Three systems of public finance have prevailed in the history of the world: —

(1) The Asiatic system, reaching from Babylonia down to modern Turkey: the government takes everything that it can lay its hands upon without crippling the country and leaving it unable to furnish taxes the next year; and the money is then all spent by somebody.

(2) A method that is best exemplified by the English system: the chancellor of the exchequer calculates beforehand the necessary expenditures of the government, which are usually so steady that he can come very close to the actual sums; he then calculates the revenue, and if it comes to less or more than the probable outgo, he adds to or diminishes a small elastic tax on incomes. This is the method universally adopted by corporations and private institutions which serve public purposes, and is substantially followed by American states and cities.

(3) A method that proceeds from the other end on: it provides revenues without any special reference to the needs of the country, and then considers ways of spending money to balance those revenues. This system, almost unexampled in history, is followed by the federal government of the United States, and is one of the weakest parts of all American government. It has arisen because the tariffs are framed with a view, not so much to stimulate imports and thus increase the revenues, as to reduce the import of dutiable goods for protection to American industries. Every tariff from 1789 down has expected that many importations would continue, even under high rates of duty. The wealthy man who wants

champagne or a modern picture or a London hat will have it no matter what the duty is; and on more common articles the duty must leave some opportunity for importation, because a large customs revenue is essential to the government; but nobody can ever predict beforehand just what the result of a new tariff will be, and customs receipts are subject to great variations according to the prosperity of the country.

A panic invariably cuts down customs receipts: for example, in 1836 customs brought in $23,000,000; in 1837, $11,000,000; in 1872, $216,000,000; in 1874, $163,000,000. The excise duties are much steadier, but still they vary unaccountably from year to year: they brought in $167,000,000 in 1893, and $147,000,000 in 1894. Furthermore, neither the customs revenue nor the internal revenue is elastic, for neither can be altered without long-continued and violent political debates. Hence our national revenue is fluctuating, and bears but little direct relation to the needs of the government.

Four times in its history has the United States accumulated a surplus out of taxes — in 1801–1808 to the amount of $43,000,000; in 1816–1819, about $34,000,000; in 1822–1836, about $139,000,000; in 1866–1893, about $1,881,000,000. In every case except the year 1836 the balance went to reduce the public debt, or to provide a reserve to protect circulating forms of that debt. During all these periods of debt reduction, the government was hampered by the necessity of buying back its own bonds at a premium.

The outgo of the government is affected whenever more money accumulates than is needed. The country in general does not like to see balances accumulate in the treasury; it therefore permitted the payment of $20,000,000 of direct tax back to the states in 1891, favored the dependent and private pension bills in 1890, and in 1886 came near adopting a scheme for spending $77,000,000 on education in the states.

In England the whole outgo of the government is combined in one statement, for which the chancellor of the exchequer and the whole ministry are responsible. In the United States

the secretary of the treasury makes estimates, but the actual expenditures are authorized by bills introduced by half a dozen different committees. Of late years the Speaker of the House has become an untitled chancellor of the exchequer, and insists that the total expenditures shall bear some relation to the money likely to be in hand. Leaving out of account special war expenditures, the national expenses were in the decade from 1880 to 1890 about $250,000,000 a year, and in the next decade about $350,000,000 a year.

The whole budget system is much disturbed by the practice of borrowing for current expenses. In 1890 the national revenue was $105,000,000 more than the ordinary expenses; in 1894 it was $70,000,000 less than the ordinary expenses; and in the six years 1894–1899 the government ran behind about $280,000,000. As Congress was unwilling to lay new taxes, there was no resource but to borrow money, although it is humiliating for a wealthy people not to pay its bills from year to year.

The expenditures of the states are usually very definite, and do not vary seriously from one year to another. Interest and sinking-fund, support of public institutions and of the state civil service, additions to public buildings, state expenditure for education, — these are the chief outgoes. Heavy expenditures, such as the construction of a new state capitol, are ordinarily provided for by an issue of state debt. On the other hand, the occasional income of a state from fees, interest, licenses, and the like is easy to estimate; corporation taxes and other large fixed taxes are tolerably steady; and the common method is to add all these items of revenue, and then to lay a special state tax on land sufficient to meet the balance. For instance, in 1895 the state of Massachusetts had a corporation tax of $3,600,000, bank taxes of $2,000,000, a collateral legacy of $420,000, liquor licenses of about $700,000; various smaller items brought the amount up to $8,500,000, and the state then laid a land tax of $1,500,000.

The state debts are almost always incurred for large and permanent improvements. The municipalities have a way of

borrowing for the construction of new buildings; this increases the interest charge, and eventually the city has to pay the principal out of taxes, as it might have done at first. It is therefore almost impossible to say off-hand whether a city is or is not raising every year money enough for its normal expenditures. Another difficulty, found only in state and local governments, is that the constitution frequently prescribes a maximum rate of taxation, but allows change of assessments; hence, if a city must have more money, it is likely to screw up the valuation and thereby increase the taxes, though the apparent rate may be diminished. Greater New York in 1903 raised the valuation from $6,595,000,000 to $9,176,000,000.

BUDGET OF THE TREASURER OF PENNSYLVANIA FOR THE FISCAL YEAR 1901–1902.

Revenue.		Expenditures.	
Land	$5,000	Legislative department	$19,250
Tax on stock	5,991,000	Executive departments	500,200
Tax on receipts, incomes, and premiums	1,839,000	Executive boards	235,850
Tax on loans	1,350,000	Judiciary	742,900
Tax on personal property	700,000	Public printing	300,000
Tax on collateral inheritances	1,150,000	Grounds and buildings	69,700
Tax on writs, deeds, etc.	150,000	New capitol	1,650,000
Licenses	2,336,800	State library	23,675
Fees and commissions	201,000	Stationery and supplies	175,000
Bonus on charters	700,000	Commissions	104,800
Interest and bond payment	356,750	Insane	1,059,542
Miscellaneous	38,675	Penitentiaries and reformatories	383,286
		Charitable and other institutions	1,739,988
		Education	6,311,479
		Militia	387,500
		Purchase of forest reservation	150,000
		Bridges	200,000
		Interest and sinking fund	251,208
		Miscellaneous	57,600
Total	$14,818,225	Total	$14,361,978

Most of the municipalities follow the same business principles. In their case, the occasional items are smaller; the greater part of the expenditures must be met by taxes; and the rate of taxation is fixed every year, and easily compared with the rates of previous years. The tax-payer ordinarily pays little attention to the amount of the state tax, but is much alive to any sudden increase in his local tax.

BUDGET OF THE AUDITOR OF SAN FRANCISCO FOR THE FISCAL YEAR 1901-1902.

Revenue.		Expenditures.	
Fees and commissions	$172,500	Legislative department	$271,800
Fines	33,500	Executive department	269,820
Licenses	470,000	Legal department	326,840
State school money	675,000	Public works	924,594
Collateral inheritances	20,000	Police	817,278
Rent	58,750	Public health	280,680
Building permits	25,000	Electricity	91,988
Miscellaneous	20,350	Light for city purposes	255,000
Tax on real estate	3,117,600	Fire	777,000
Tax on personal property	1,328,200	Water for city purposes	100,000
Total	$5,920,900	Elections	85,000
		Civil service	8,100
		Schools	1,200,000
		Public library	62,000
		Parks	285,000
		Interest and sinking fund	25,000
		Total	$5,780,100

183. Public Expenditures.

The expenditures of the various governments are regulated by a few practical principles. The first is summed up in the term "control of the purse," which means that the appropriation of money for public purposes rightly belongs to the legislative department. This principle was developed in colonial times, and was one of the chief means by which the assemblies made head against the governors. The legislatures not only claimed the sole power of taxation within their colonies, but also the right to direct the purposes for which money should be spent, and to follow and control that expenditure in the hands of the colonial executive.

The federal constitution distinctly states that no money shall be drawn from the treasury, except in consequence of appropriations made by law. During the early years of the federal republic such appropriations were frequently made in lump sums, to be expended at the discretion of the heads of departments. Gradually Congress came to itemize more and more minutely; and at present the annual appropriation bills fix the number of clerks in each bureau and their salaries, and go into

such details as the following: "Improving Newtown Creek, $10,000; of which $2,500 is to be expended on west branch, $2,500 on main branch, and balance on lower end." These appropriation bills, however, are not made up irrespectively of the executive. Every head of a department submits an elaborate estimate, based on statements made by various subordinates, of the sum necessary for each of the many branches of the service. There used to be a crabbed member of a committee of Congress who invariably cut down a particular estimate by one half, and who learned after he had left Congress that the estimate submitted to him was always just twice what was desired.

About one third of the expenditures of the federal government are "permanent" or "permanent specific" — that is, voted for a specific purpose without any limitation of time; the amount may be a definite one or such as may be found necessary for the object for which it is appropriated; and it is payable out of any moneys in the treasury, unless otherwise ordered by an act of Congress. The ordinary annual appropriations are made for a specific purpose for liabilities incurred in the fiscal year for which they are appropriated.

The expenditures of the United States are provided for by thirteen annual appropriation bills, — agriculture, army, consular and diplomatic, deficiency, District of Columbia, fortifications, Indians, legislative, executive, and judicial, military academy, navy, pensions, post office, and sundry civil. The "legislative, executive, and judicial" bill provides for the general civil service, and for the support of Congress and the judiciary; it has crept up slowly from $500,000 in 1793 to $122,000,000 in 1901. War expenses are continuous, but of course much greater when fighting is going on: about $1,000,000 a year at first, they were $20,000,000 in 1814, $35,000,000 in 1847, and $1,030,000,000 in 1865; in the year 1899 they were $229,000,000. Naval expenses were about $1,000,000 a year early in the nineteenth century; $122,000,000 in 1865, and $15,000,000 in 1888; in 1901, a year of peace,

they were $60,000,000. The Indians receive about $7,000,000 a year. Pensions cost $1,000,000 a year just before the Civil War, $27,000,000 in 1878, and in 1893 reached the high-water mark of $158,000,000, which is about double the total expense of the government in any year before the Civil War. Interest on the public debt cost from $1,000,000 to $3,000,000 a year in the decade before the Civil War, rose to $144,000,000 in 1867, and by reduction of the principal and refunding at low rates of interest has come down to $69,000,000.

The control of the expenditures of the government is exercised through the Treasury Department, since warrants drawn for expenses in other departments come there for payment. The principal accounting officers are a comptroller, and six auditors, one for each of the principal departments. Since no account can be paid without their approval, they exercise the final right of deciding whether a given expenditure is covered by act of Congress, and whether money has been appropriated by Congress in a constitutional manner. In 1895 Comptroller Bowler refused to authorize payment of a bounty on beet sugar under an act of 1890, on the ground that it was unconstitutional to pay bounties to producers; whereupon suit was brought before the Supreme Court, which issued a mandamus compelling the payment of the money. The registrar of the treasury is a sort of book-keeper; the treasurer is the custodian of the public funds.

The methods of government bookkeeping are complicated, and it is difficult for federal officials to get a settlement of their accounts. If a linchpin is stolen out of a government wagon, a new one cannot be had unless some one will take oath that the old one was used up in the government service. In 1886 the government books showed nominal balances against John Adams for $13,000; against General Lafayette, $5,000; against Washington Irving, minister to Spain in 1847, three cents; against William D. Howells, consul at Venice in 1873, $24.75; against John Howard Payne (the author of

"Home Sweet Home"), consul at Tunis in 1853, $205.92. Probably every one of these claims was offset by payments for the government, and in many cases the government really owed the alleged debtor. Accounts with the states have often stood unsettled for many years: certain payments made by Massachusetts during the War of 1812 remained unpaid till 1861. With this strict and remorseless bookkeeping it is often necessary to pass special relief bills in cases of hardship.

The expenditures of the states are made in the same manner as those of the Union: money must be appropriated by the legislatures, and annual accounts of receipts and expenditures are published. The states, however, have many institutions (such as prisons and workhouses) which produce something, and which are sometimes allowed to retain the money and allow it in their accounts. A better system, which is gaining ground, is to have all receipts paid into the state treasury and to make appropriations large enough to cover the actual expenses. The same difficulty occurs with fees, which are common in national, municipal, and state service, and sometimes make large incomes: the clerkship of the supreme court of a state, for instance, may be one of the best-paid offices in the state. The national government tends more and more to require that fees be turned into the treasury, and that an adequate salary be voted; and there is room for reform in that direction in the states.

The purposes of state expenditures are legion. The heaviest is the payment of legislative, executive, and judicial salaries. Next comes the maintenance of state institutions, — prisons, insane hospitals, reform schools, normal schools, — and often a large part in the support of country schools. Another large item is the construction of ways of transportation: the state of New York has spent $95,000,000 on canals; Massachusetts is now spending out of the state treasury about half a million a year on roads. The sums subscribed by states to canals and railroads are usually supplied by loans; but the interest becomes an annual charge, and eventually the bonds have to be

paid. State bookkeeping is in most states less punctilious than at Washington, though there is commonly a state auditor, who supervises payments. In general the state legislatures do not go far into the details of appropriation bills: very frequently they appropriate lump sums, to be expended at the discretion of the trustees of institutions or of executive boards, who keep and file careful accounts.

Expenditures of cities are in the main like those of states. First come the salaries of city officers of every kind, including the support of expensive police and fire departments. Cities have also the costly responsibility of keeping up the streets, an expense much increased by the careless American habit of freely granting permits to tear up pavements in order to lay pipes. Schools are a heavy item in city budgets. Parks and other pleasure grounds absorb a great deal of money. Most of the cities are in debt; and the interest, with the sinking-fund to extinguish the principal, is a heavy charge. Public water and gas works and electric-light plants, even though productive, require large expenditures for extensions and interest. City bookkeeping is one of the matters that most need attention, and efforts are now making to induce states to agree on a common system of municipal accounting, which will make it possible to compare the different kinds of expenditure from year to year, and also to compare the expenses of one city with those of another.

Counties and towns are less subject to extravagant expenditure than larger units of population, for they are more carefully watched; but the erection of county buildings often costs much more than that of private buildings of the same size and character. One of the chief items for local expense throughout the country is schoolhouses: even very small communities often take pride in spending money for handsome school buildings.

Throughout the Union the main difficulty with expenditures is a lack of one head in each community who shall be responsible for the outgoes of government. Money is appro-

priated by Congress, the legislatures, and city councils, each under the influence of various committees; and there is not a sufficient check on extravagance. In this respect, however, the states, and still more the cities, are managed better than the national government.

184. State Debt.

The third great department of public finance is public debt, which is too often treated as though it were a calamity. The foundation of modern national debts was an arrangement, in 1694, between the English government and a new corporation called the Bank of England, by which, in return for large privileges, the bank advanced to the government £1,200,000.

The colonies often borrowed money of their own citizens in order to fit out military expeditions. The states did the same in the Revolution, and in 1789 over $18,000,000 of state debt was outstanding. This sum was assumed by the United States, and for about thirty years thereafter the states had little or no debt. Then came the great era of canal-building, which involved all the states from New York to Virginia, and westward to Illinois. A little later, in the thirties and forties, came the building of railroads with state aid, causing an immediate use for millions of dollars; and at the same time a new supply of loans became available, because foreign capitalists were willing to advance large sums on the credit of the states.

Matters went on flourishingly until the great panic of 1837, which instantly cut down the state revenues and for the time stopped the development of the West. Many of the states defaulted on their bonds, among them Pennsylvania, a fact which led Sidney Smith, a holder of some of the bonds, to say that he never saw a Pennsylvanian without a desire to strip him of his coat and boots. Pennsylvania eventually paid up, but other states repudiated principal and interest. The whole transaction was much confused because in some cases the state issued bonds through railroad and banking corporations,

which returned only a part of the proceeds: about $14,000,000, which had been lent the states in good faith, was an absolute loss to the capitalists.

A second period of repudiation came during and after the Civil War. By the Fourteenth Amendment it was expressly declared that no state should pay any debt incurred in aid of rebellion against the United States; hence all loans of the eleven seceded states incurred during the war became void. The ante-bellum debts were still valid, and the reconstructed governments of the Southern states at once proceeded to make new debts. In South Carolina the accounts were so loose that nobody ever knew whether the issue of bonds was $25,000,000 or $35,000,000; but $6,000,000 are known to have been put on the market without any authority of law. The debt of the state, which in 1861 was $4,000,000, in 1871 was stated at $29,000,000, of which about $18,000,000 was soon after repudiated. The state of Virginia was divided during the Civil War, and therefore the reconstructed state refused to hold itself responsible for more than one half the outstanding debt; and of the remainder a considerable part was scaled. The Southern states, together with two Northern states, between 1865 and 1885 repudiated about $160,000,000, much of which had been contracted by state governments which did not really represent the tax-payers.

The amount of outstanding state debts was made the subject of inquiry by the census of 1890. Most public debts are slowly reduced by sinking-funds, accumulated to extinguish the debts when they mature. Deducting the sinking-funds, the state debts in 1890 were $229,000,000, a decrease of $68,000,000 from 1880; they amounted to less than $4 per capita throughout the United States. As might be expected, the richest states had very little outstanding debt: in Rhode Island the debt was about 70 cents per capita; in New York about 40 cents; in Virginia, before the final settlement of the debt, about 20 cents. A large number of the states have only nominal debts for temporary purposes, and more than half of them are practically free from indebtedness.

The states, even those which once repudiated, are now able to borrow on very low terms. From 1830 to 1850 the states were the principal heavy borrowers; now they compete with municipalities and corporations. A few state constitutions seek to limit state debts by provisions that they shall not exceed fixed amounts, ranging from $50,000 in Michigan to $1,000,000 in Pennsylvania; and that the creation of new debts must be ratified by popular vote. Apparently the present outstanding state debts are likely almost to disappear in the course of the next two or three decades.

185. Municipal Debt.

One reason why state debts diminish is that municipal and local debts constantly increase. All American cities are making large provisions for future generations: streets and bridges, sewers and waterworks, schoolhouses and other public buildings, are intended to serve many generations. Since the construction of an immense water system like the New York City Croton Dam and Aqueduct costs as much as a whole year's taxes, it is reasonable that such improvements should be distributed among several generations of tax-payers. City governments frequently shrink from facing improvements which must be made year by year: hardly an American city undertakes to build out of taxes enough schoolhouses to seat the increasing numbers of children. Street paving is frequently covered by loans, although the pavement wears out and has to be renewed before the bonds are due. With few exceptions, however, the municipal debt represents permanent and valuable property necessary for the common weal.

The total county debt in 1890 — principally for buildings — was $145,000,000; and, although this is only $2.30 per capita for the whole country, in many states it is a very heavy item: Montana, for instance, had in 1890 $2,000,000 of county debts, or $12 per capita. The county debts from 1880 to 1890 increased by $20,000,000; but, as the creation of new counties slackens and the necessary buildings are constructed, it is

probable that the debts will diminish, especially since the counties in many states are now prohibited from incurring debt in aid of railroads.

The school-district debt hardly exists in the Southern states, because there is no such administrative unit; and the Southern county debts undoubtedly include items which in other states go to the school-district account. The total school-district debt in 1890 was $37,000,000, more than twice as much as in 1880; $25,000,000 of this sum was outstanding in the North-central states, from Ohio to Minnesota and Kansas. The per capita school-district debt throughout the United States is 60 cents, but in North Dakota it is $5. This form of debt ought also to diminish when the country regions are properly supplied with schoolhouses. Like the county debt, it represents necessary and actual expenditures.

By far the largest item of debt created under state authority is that of the local governments. In 1890 it was $725,000,000, an increase of $40,000,000 over 1880, and averaging $11.50 per capita throughout the United States. The heavy municipal debts come where there are most cities; hence it is not remarkable that $450,000,000 of this debt should be owed in the states from Maine to Virginia, and $184,000,000 more in the states from Ohio to Kansas. New York, with its great metropolis and other populous cities, leads off with $187,000,000 of municipal debt, which is $30 per head of the population. The Massachusetts localities come next with $70,000,000, which is about $34 per head. In 1901 the city of Greater New York had rolled up its debt to $364,000,000, which is considerably more than $100 per capita. Chicago owed only $26,000,000, or about $12 per capita; Boston owed $46,000,000, or about $80 per capita; San Francisco had practically no debt. It is certain that the census figures of 1900, when made up, will show a large increase of municipal debt; so that the total will certainly be over $1,000,000,000, or an average of about $13 per capita, and will probably be greater than the national debt.

It is difficult to see how municipal debt can be diminished, for American cities are waking up to see what may be done to make life in cities attractive and healthful. New York is now borrowing $35,000,000 to construct a subway, and $30,000,000 for new bridges and tunnels to Brooklyn and the neighboring shore. Many cities are spending large sums in acquiring park lands and boulevards. The pinch is not in the borrowing, for the credit of the great American cities is almost as good as that of the federal government, but in the interest charge, which in New York City is upwards of $10,000,000 a year. There is a limit beyond which increased taxation tends to diminish the revenue, by discouraging the people from coming into a place. On the other hand, expenditures for parks, breathing-places, boulevards, new streets, bridges, tunnels, subways, schoolhouses, public docks, and other municipal purposes, which could only be provided for by loans, increase the productive power of a community and thereby raise its ability to bear taxes.

186. National Debt.

Until about 1900 the heaviest block of public debt in the United States was that of the federal government. It goes back to a resolution of the Continental Congress of October 3, 1776, providing for a public loan. During the Revolution about $12,000,000 were lent on what we should call bonds; about $6,500,000 were lent by the foreign governments of France and Spain; and about $17,000,000 simply accrued, for when the United States had nothing else it paid in interest-bearing certificates of indebtedness. During the Confederation the credit of the government was such that it could borrow nowhere, except $3,600,000 from Dutch bankers; and interest accrued, so that in 1789 about $40,000,000 principal and $13,000,000 interest were outstanding, and evidences of that debt could be freely bought for specie at from 15 per cent to 25 per cent of their face. Over $18,000,000

of state debt was assumed in 1790; so that, when the accounts were all made up, the United States in 1793 owed $80,000,000.

The debt somewhat increased under the Federalists and by the purchase of Louisiana, so that in 1804 it stood at $86,000,000; but Jefferson and Gallatin set themselves steadily to reduce it, and by 1812 brought it down to $45,000,000. The War of 1812 raised it to $127,000,000; and then it slowly decreased, till in 1836 it was practically extinguished, and the government had a surplus of $36,000,000, $27,000,000 of which it gave to the states. The panic of 1837 so reduced the revenues that an interest-bearing public debt for running expenses at once sprang up, and in 1860 it was $65,000,000; then came the enormous drafts of the Civil War, which raised it in 1865 to $2,381,000,000, besides many non-interest-bearing obligations.

Under the influence of high taxes and national prosperity, the government then entered systematically upon the almost unexampled task of paying off its debt. There was a strong feeling in the United States that a national debt was a national burden, which must be thrown off as quickly as possible; though the outstanding debt in 1865 was really much larger than it appeared, for it had been contracted in greenbacks, but was payable and was paid, principal and interest, in gold. In twenty years, to 1885, the principal was reduced from $2,381,000,000 to $1,196,000,000. Then came further reductions, till on December 31, 1891, the funded debt stood at $590,000,000. During the decade from 1890 to 1900, however, the debt was again somewhat increased, partly because of the lean years, from 1894 to 1899, and partly because of the expenses of the Spanish War; so that in December, 1901, it stood at $945,000,000.

In addition to this interest-bearing debt, the United States has a peculiar kind of obligation impossible either to states or to localities. In 1862 Congress authorized the issue of legal-tender paper currency, and eventually about $450,000,000

TABLE OF UNITED STATES DEBT.

a Year.	Interest-bearing Bonds.	Interest-bearing Treasury Notes.	Paper Notes.	Total Debt.	Debt less Cash.	Annual Interest.
1780	*b* $900,000	. . . . .	*f* $241,600,000	?	. . . . .	. . . .
1785	*c* 37,500,000	. . . . .	?	*i* $42,200,000	. . . . .	*j* $1,900,000
1790	*c* 39,100,000	. . . . .	*g* 78,000,000	*i* 52,800,000	. . . . .	*j* 1,900,000
1795	75,300,000	. . . . .	. . . . .	80,700,000	. . . . .	2,900,000
1800	76,500,000	. . . . .	. . . . .	83,000,000	. . . . .	3,400,000
1805	77,900,000	. . . . .	. . . . .	82,300,000	. . . . .	2,700,000
1810	53,100,000	. . . . .	. . . . .	53,200,000	. . . . .	3,200,000
1815	88,500,000	$10,600,000	. . . . .	99,800,000	. . . . .	6,000,000
1820	89,000,000	200,000	. . . . .	91,000,000	. . . . .	5,200,000
1825	83,700,000	. . . . .	. . . . .	83,800,000	. . . . .	4,400,000
1830	48,500,000	. . . . .	. . . . .	48,500,000	. . . . .	1,900,000
1835	*d*	. . . . .	. . . . .	*d*	. . . . .	. . . .
1840	. . . . .	3,300,000	. . . . .	3,600,000	. . . . .	200,000
1845	14,900,000	800,000	. . . . .	15,900,000	. . . . .	1,000,000
1850	64,100,000	200,000	. . . . .	64,500,000	. . . . .	3,800,000
1855	35,600,000	. . . . .	. . . . .	35,900,000	. . . . .	2,300,000
1860	44,700,000	19,700,000	. . . . .	64,800,000	$60,000,000	3,100,000
1865	*e* 969,100,000	1,046,900,000	458,200,000	2,681,300,000	2,674,800,000	77,400,000
1870	2,000,500,000	3,000,000	430,500,000	2,480,700,000	2,331,200,000	129,200,000
1875	1,722,700,000	. . . . .	*h* 498,100,000	2,232,300,000	2,090,000,000	103,100,000
1880	1,724,000,000	. . . . .	*h* 388,800,000	2,120,400,000	1,919,300,000	95,800,000
1885	1,196,200,000	. . . . .	*h* 663,700,000	1,864,000,000	1,375,400,000	51,400,000
1890	725,300,000	. . . . .	*h* 824,900,000	1,552,100,000	890,800,000	36,100,000
1895	716,200,000	. . . . .	*h* 958,300,000	1,676,100,000	901,700,000	31,000,000
1900	1,023,500,000	. . . . .	*h* 1,112,300,000	2,137,000,000	1,107,700,000	40,200,000

a The date is January 1 to 1840, after that July 1. *b* Foreign debt only.
c Principal of foreign and domestic debt.
d The debt of $4,000,000 was virtually extinguished in January, 1835.
e Pacific Railroad debt is not included in this table.
f Total issue. *g* Estimated outstanding amount.
h Including certificates of deposit.
i Including arrearages of interest, and excluding paper currency and state debts.
j Approximate.

was issued. This has been reduced to $347,000,000, and with outstanding fractional currency and some other items makes the non-interest-bearing debt of the United States about $389,000,000. From the aggregate of funded debt and non-interest-bearing debt, which is now about $1,300,000,000, is to be subtracted the cash in the treasury (except several hundred million dollars held there for the specific redemption of various forms of treasury notes and certificates). That cash balance is always kept at something over $100,000,000, and sometimes reaches $200,000,000 or $250,000,000. Making these deductions, the actual indebtedness of the United States on December 31, 1902, was $947,000,000. At present there is an annual surplus applicable to the reduction of the debt, and there has repeatedly been a strong movement to retire the greenbacks. One serious difficulty is that the currency system of the national banks is based on government bonds, and if the debt is paid all the national banknotes will have to be called in. The sentiment of the country, however, is strongly against a continuous national debt; and ten years of prosperity should be sufficient to bring us again to the happy condition of 1836.

The rate of interest paid by the United States has varied with the conditions of the money market and the necessities of the government. The loans of the Continental Congress usually carried 6 per cent; under the funding system of Hamilton, bonds were issued at 6 per cent and 3 per cent. During the War of 1812 the government refused to offer more than 6 per cent, but was obliged to sell its bonds far below par, so that the $80,000,000 incurred probably did not net more than $74,000,000 in specie values. This meant that the government paid from 8 per cent to 10 per cent for its money, and then had to pay a bonus of $6,000,000 when the transaction was completed. During the Civil War much the same process was adopted: no bonds drew more than 6 per cent, but there were times when $1,000 in gold would buy $2,500 worth of bonds paying 6 per cent interest in coin; that is, the

lender got 15 per cent on his money, and eventually received back two and a half times his investment. The reason was simply the doubt whether the United States would be able to redeem its promises. A large share of the borrowings during the war were for very short terms; it was not till 1869 that the great part of the debt was funded in 5 per cent and 6 per cent bonds. By this time the credit of the government had so improved that it began to issue bonds at reduced interest: by 1880 no interest was offered higher than $4\frac{1}{2}$ per cent; in 1891 a lot of $4\frac{1}{2}$ per cents fell in and were continued at 2 per cent. At present the United States can borrow any amount at $2\frac{1}{2}$ per cent, and even at 2 per cent, for it has the best credit in the world.

This low rate of interest is obtained because the government scrupulously redeemed its promises on the Civil War loans, and because government bonds are absolutely free from any tax by state or local governments; so that a $2\frac{1}{2}$ per cent United States security may perhaps net as much as a 4 per cent railroad bond. By the reduction of the debt and the improvement of the public credit, the interest charge, from one of the heaviest items of national expenditure, has become one of the lightest. In 1867 the interest was $144,000,000; in 1902 it was only $29,000,000.

The public debt has been expressed in many different forms, of which the most important are the following: —

(1) The bonded debt, expressed in a formal engraved bond. In order to attract investors, there is usually a provision that bonds cannot be called in before stated periods, which may be five, ten, or twenty years. When the government has a surplus available for debt redemption, and no bonds are yet due, it buys them in the open market, often at considerable premiums, and thus disposes of the surplus and at the same time cuts off interest. United States bonds are a favorite investment, because secure, and because they are the legal basis of the national bank notes. Coupon bonds are furnished with engraved coupons for each interest payment, which may be

deposited like checks in any bank. Holders of registered bonds receive their interest by government check.

(2) The treasury note. This is an interest-bearing promise to pay, usually running one, two, or three years. Such notes have been issued in every time of financial stress, — as, for instance, during the War of 1812, in the financial depression of 1837 to 1842, and during the Civil War, when hundreds of millions of such notes were issued bearing 7.3 per cent interest. Since the Civil War no resort has been had to this form of borrowing.

(3) Circulating paper money. Although suggestions were often made that this resource be used, it was not actually employed until 1861, and in 1862 began the first legal-tender notes.

187. Reforms in Public Finance.

From the two chapters on financial functions, we may see in what direction improvements ought to proceed. The practical division of taxation, by which the federal government depends almost entirely on indirect taxes, — imposts or consumption duties, — leaves to the state and local governments almost the whole field of land, property, franchise, license, succession, and miscellaneous taxes. The advocates of a single tax, to be laid on real estate, make a strong case, because all occupations and franchises must have the use of land and can be reached in that way; but no state has so far shown a disposition to give up personal taxes, and many states find direct corporation taxes easy to levy and very productive. It is desirable that vexatious taxes producing small amounts and expensive in application, such as state income taxes, should be abandoned.

A great reform may be made in the methods of assessment, by creating more permanent and responsible and better-paid boards of tax assessors: over-estimates lead to vigorous objections, and often to resort to the courts, but an error or fraud or any under-assessment of real estate is likely to pass unques-

tioned. The ordinary personal-property tax is unfair, because it is evaded in whole or in part by fully three fourths of the tax-payers, and the other fourth have to bear an unreasonable share of the burden.

The national taxes are productive, and are easily and cheaply collected. The chief practical difficulty in administering them is that the tariff is laid for two purposes, which really conflict with each other: so far as it brings in revenue, it is not protective; so far as it is completely protective, it shuts off revenue. In the effort to distribute protection, the tariff is assessed on more than 1,000 different articles, and cannot fairly be laid and collected because no appraiser is wise enough to find the value of so many articles.

At present all forms of government in the United States are acquiring property: parks, forests, and reservations increase; public buildings of every kind are multiplied; the trend seems distinctly to be toward a municipal ownership of waterworks and of gas and electric light plants; and in 1902 the people of Chicago voted by a great majority that it was expedient for that city to acquire the car lines. This throws an additional responsibility upon the governments, and emphasizes the necessity of experts to manage public property.

With the exception of the national government, every American government has some kind of budget; but in no state, and in few cities, is there any one official who keeps a firm hand on the relations between income and outgo. The mayor, and to some degree the finance committees of city councils, consider the city finances together; and in a few cities, notably New York, the budget of expenditures and taxation is made up by a small board of apportionment or estimate, and is not voted on by the city council. What we need is a stronger sense of the importance of concentrating financial responsibility and supervision in a few hands.

In the United States, public expenditures usually go directly to public purposes. In state governments, and still more in city governments, there are some sinecures, and many cases

where two or three men are paid to do the work of one. In other words, though the items of state and city expenditures are almost always for the public good, it takes more money to accomplish the purpose than in private corporations. States and cities skimp the salaries of the most important public officers, so that it is a sacrifice for the best men to accept public service: policemen, clerks, firemen, and laborers are often much over-paid in comparison with the servants of railroad and manufacturing companies. The public suffers great loss also from not working out in advance careful schemes of public improvement, so as to do first what is most needed, and to avoid doing things several times over. The sums spent in digging up Fifth Avenue in New York City and then filling it in again would long ago have built a tunnel from end to end, sufficient to hold sewer, gas, water, and electric mains, and everything else that needs to go below the surface.

Public debts are in general a great public advantage: but over-borrowing brings about ruin, as has been shown in the two epochs of repudiation by the states, and in the bankruptcy of small cities; and Americans are too apt to borrow money for temporary needs, instead of facing the taxation which must eventually pay for all public expenditures.

One danger arising from foreign public debts does not apply to the United States: the $6,000,000,000 of French debt, with an interest charge of about $200,000,000 a year, is really a payment by one part of the French population to another part; sometime the burden of interest will become such that there will be a revolution, and a scaling, or repudiation, of the debt. In the United States, where the total burden is not a fifth as great per capita, and where the country is extremely rich and productive, this danger can hardly come about, especially since the bonded debts of railroads alone far surpass the total public debt within our borders.

Part VIII.

External Relations.

CHAPTER XXIII.

FOREIGN INTERCOURSE.

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189. History of American Foreign Policy.

No function of American government is so centralized as the foreign relations. The constitution not only gives to the president and Senate sole power to make treaties: it also bestows on Congress exclusive power to regulate commerce with foreign nations, to punish offences against the law of nations, to declare war, to raise, support, and govern armies and navies; it provides that no state shall enter into any treaty, alliance, or confederation, or lay any duties on imports; or tax exports if Congress objects, or without the consent of Congress keep troops or ships of war in time of peace, or enter into any agreement or compact with a foreign power; or engage in war unless invaded; while to the federal courts it gives jurisdiction in almost all cases involving foreign relations.

This exclusive power dates back to colonial times: the English colonies had no authority to enter into relations with foreign countries; they were bound by treaties made between England and foreign powers, and were drawn into wars not of their own choosing. From 1775 to 1789 the states had some control over foreign relations, and could legislate on foreign commerce; but they were represented in foreign courts only through ministers appointed by Congress, and no state made any arrangement or treaty with a foreign power on its own account.

The foreign powers of the new federal government were almost immediately invoked by the breaking out of the French Revolution, followed in 1792 by war in Europe, which continued with but one year of peace till 1815. In a proclama-

tion of April, 1793, President Washington laid the first stone in our national policy by his neutrality proclamation. The aggressions of both England and France made the carrying out of this policy a difficult task: in 1794 we were on the verge of war with England; in 1798 we engaged in naval war with France. Nevertheless, these troubles were healed, and until 1812 we were at peace, except with the Barbary Powers. The splendid naval victories of the War of 1812 gave us a favorable peace, and so much prestige in diplomatic affairs that from that day to this few powers have wilfully antagonized the United States.

A period of great territorial expansion now set in: Louisiana, Oregon, West Florida, and East Florida were annexed from 1803 to 1819. Meantime a new group of international neighbors grew up in the Latin-American states; and in 1823, in their behalf, Monroe reiterated the principle that the United States would not intervene in foreign difficulties, but he coupled with it the declaration that foreign powers must not interfere in quarrels not their own in America.

Until the annexation of Texas, New Mexico, and California, in 1845 to 1848, the country was chiefly engaged in developing the West. California, however, brought up the question of isthmus transit and a canal, a matter which continued a storm centre of diplomacy for half a century. The Civil War brought two great international difficulties, — the fitting out of Confederate cruisers in British ports, and the attempt of France to conquer Mexico. As soon as the war was over, the United States took up these problems and settled them both to its satisfaction. The question of Cuba and the control of the West Indies then became important, and from 1868 to 1897 busied our diplomats. That question led to the Spanish War of 1898, as a result of which Cuba became a dependency of the United States, and the Spanish possessions of Porto Rico and the Philippine Islands were annexed to this country.

Although since the Revolution the United States has engaged in five foreign wars, — the French in 1798, the Barbary in

1803–1804, the English in 1812–1815, the Mexican in 1846–1848, and the Spanish in 1898, — its purpose has been essentially pacific in all except the Mexican War. The main principle of American diplomacy is to keep out of complications in Europe, and at the same time to prevent violent and destructive changes anywhere in America.

190. Diplomatic Representatives.

Foreign relations do not adjust themselves, nor are they adjusted simply by principles of mutual interest. The relations between nations are regulated first of all by international law, — that is, by centuries of precedents and agreements, — and are recorded by treaties; and both international law and treaties must be applied by individuals organized in a regular foreign service.

The official head of the diplomatic service is the president; and most men in that office keep close relations with the Department of State. Under the constitution, the president formally receives foreign ambassadors; but it is very unusual for him personally to discuss diplomatic matters with a foreign minister, or to write personal letters to a foreign government. Many of the presidents before 1861 were experienced in the diplomatic service: John Adams, Jefferson, Monroe, John Quincy Adams, Van Buren, and Buchanan had all been accredited ministers abroad, and each took special interest in foreign affairs while president.

Next in power comes the secretary of state, who in other countries would be called minister of foreign affairs. It is his duty to draw up instructions for ambassadors, to keep in correspondence with them, to discuss matters with foreign representatives, and personally to conduct negotiations and frame treaties in Washington. Few officers of government have such an opportunity to set their mark on their country's history and to affect their country's destiny. The secretaryship of state has been held by some of the most eminent Americans, among them Jefferson, Madison, Monroe, John

Quincy Adams, Henry Clay, Martin Van Buren, Daniel Webster, John C. Calhoun, William L. Marcy, Lewis Cass, Edward Everett, James Buchanan, William H. Seward, Hamilton Fish, James G. Blaine, John Sherman, and John Hay.

The president appoints the members of the diplomatic service (subject to confirmation by the Senate), and may remove them. Washington, for instance, recalled Monroe from France in disgrace in 1796; Jackson recalled General Harrison from Colombia in 1829; Mr. Motley was removed from the Austrian mission by President Johnson in 1867, and from the mission to England by President Grant in 1870. Foreign representatives are accredited directly to the president, and he may refuse to hold diplomatic relations with men who are offensive to him: President Madison declined to allow further correspondence with James Jackson, the English minister, in 1809; and General Grant in 1871 demanded the withdrawal of Catacazy, the Russian minister.

It is a disputed question whether the president may appoint foreign representatives without previous provision for their salaries by act of Congress. Of course no legation can be permanently maintained if Congress refuses to vote money for the necessary salaries, though President Grant in 1876 protested against a bill for discontinuing a legation; but presidents often appoint commissioners for special exigencies. For instance, in 1887 Mr. Cleveland appointed a commission to negotiate a fishery treaty with Great Britain, and in 1893 designated Mr. Blount as special commissioner to investigate the state of things in the Hawaiian Islands.

No qualifications for ministers are prescribed by the constitution or by law; but most appointees have already seen public service of some kind in Congress, in the state governments, or in the federal civil service. It is unusual to appoint actual officers in the army or navy, even as special commissioners. Since it costs a great deal of money to keep up a legation, wealthy gentlemen of public spirit are often

appointed, and prove excellent ministers. As a minister is expected to establish friendly relations with the people to whom he is sent, it is very desirable that he should speak the language of their country; but there are many instances in which American ministers cannot even use French, which is the usual intermediate language in diplomatic circles. American ministers are of course subject to the same rules of acceptance by foreign countries as are applied in Washington: in 1885 the Austrian government refused to receive Mr. Keiley as minister, one ground being that his wife was a Jewess; and there was nothing for it but to appoint some one else.

The diplomatic representatives of the United States are divided into four categories: ambassadors; envoys extraordinary and ministers plenipotentiary; ministers resident; and chargés d'affaires, who are diplomatic subordinates, for the time being put in charge of the business of the legation. Special commissioners, a fifth kind of representatives, are often appointed to sit on arbitrations, or to adjust claims and boundaries. The dignity of ambassador was not created until 1893, and is enjoyed only by the representatives sent to and from Great Britain, France, Germany, Russia, Italy, Austria, and Mexico. Every legation has one or more secretaries, who often remain for many years at their posts in order to keep up the traditions of the legation. Sometimes the United States sends special ambassadors, as on the occasion of the coronation of Edward VII in 1902.

The term of a foreign representative is not fixed by law, but there are always numerous changes when a new president comes in; so that eight years is about the limit of an appointment. Mr. Marsh, however, was minister to Italy from 1861 to 1882, serving under six presidents. Secretaries of legation sometimes are promoted to small diplomatic posts; but the diplomatic service has offered no career in which a man could expect to rise to an important life position. Under Presidents McKinley and Roosevelt there have been frequent cases of transfers of successful ministers from one post to a

larger one: thus, Mr. Hardy has been minister to Persia, Greece, Switzerland, and Spain.

Ministers have a special right to protection by the authorities of the countries to which they are accredited: no minister, and no employee or servant of a minister, may be arrested on civil suit; no police may enter the premises of a minister; and in disturbed countries, like those of South America and the Orient, ministers may give protection to refugees in time of revolution.

The highest salaries paid to diplomatic representatives are $17,500 to each of five of the ambassadors; the lowest are $1,200 for a third secretary of legation. These salaries are low in comparison with those paid by foreign powers for similar services: the British minister at Paris has a salary of $40,000 a year, with a splendid house and many small expenses borne by his government. Indeed, no American can accept a mission to a first class power unless he has private means in addition to the salary.

Notwithstanding the somewhat haphazard way in which ministers are appointed, and their frequent lack of the qualifications expected in the foreign diplomatic service (such as previous public service, social distinction, and knowledge of the languages), the United States has seldom failed to obtain what it desired because our minister was not up to his work. In these days of ocean telegraphs, the minister constantly refers home for instructions, and takes no important steps without the direction of the secretary of state; and our very simplicity, directness, and lack of form often make it easier to get at the kernel of the matter in controversy.

191. Consuls.

Apart from the diplomatic representatives are the commercial representatives, the consuls. Since 1778 the United States has appointed and received consuls, who are accredited to particular places, especially the seaports, and are expected to represent the trade interests of their country. The grades

of the service are as follows: consul-general, consul, vice-consul, consular agent. The consul-general acts as consul in the capital of the country to which he is accredited, and also supervises the other consuls in that country; the vice-consul is simply a substitute for a consul for the time being; the consular agent is a kind of deputy for a consul. The consuls are appointed by the president and confirmed by the Senate, and receive salaries ranging from $1,000 to $4,000; those of the consuls-general run up to $7,500. Official fees are not added to the salary; but unofficial fees, such as the acknowledgment of papers, are retained by the consuls, and sometimes amount to several hundred dollars a year.

Most of the consuls are men who have no other business. The United States appoints few merchant consuls; but it is common to have a vice-consul or a consular agent who is a citizen of the foreign country. Such persons, or paid clerks, are likely to transact most of the consular business.

Although in 1856 the consular service was divided into classes, and in 1864 thirteen consular clerks were created as a means of entrance to the service, those clerks are not promoted; but transfers from smaller to larger regular consulates, once rare, have now become frequent.

Foreign consulates are much prized, although the pay is small; for Americans like to visit and live in foreign countries. Hence a powerful political pressure is brought to bear on the president and secretary of state; and most consuls are appointed, not because they are acquainted with business in general or with the trade of the places to which they are going, but because they have been useful in the campaign or the party. Under each administration there is a new crop of expectants, who can be provided for only by removing the previous occupants; therefore the consular service has been one of the branches most systematically disturbed for political reasons.

Since 1895 various attempts have been made to reform the consular service by admitting men to the lower grades

on examination, and then promoting and transferring them according to the needs of the service; and eventually this policy must prevail, for the development of American commerce abroad is much impeded by a service which contains many good and conscientious men, but which neither promotes nor keeps in office those who have proved their competence.

The 300 consuls and 30 consuls-general are all subject to the general rule of international law that no functions can be exercised until the "exequatur" is received, — that is, the official recognition of the government to which they are accredited; and both in the United States and in foreign countries the exequatur is sometimes revoked, and the consul is thus cut off from all official action. A famous instance was the withdrawal of the exequatur of the French consul at Boston in 1793. Consuls are not entitled to the immunities of diplomatic representatives; they may be sued for ordinary debts, although by treaty many countries agree that they shall not be subject to civil arrest or to the seizure of archives.

The official functions of consuls are as follows: —(1) They have commercial duties, pertaining to the movement of trade between the two countries: for instance, they certify invoices of merchandise exported to the United States, and look after American sailors who are ill or stranded in foreign ports. Consuls also act as notaries for the registration of various legal papers; and they make periodical reports on the trade of the country in which they live, with especial reference to commerce with the United States. These reports may be on any subject which seems significant, and considerable extracts from them are published in the official serial known as *Consular Reports*. A consul at Three Rivers, Canada, who in 1891 introduced into his report some criticisms of the people of the place, saw his opinions printed in full, with the result that he was shortly transferred from his post.

(2) Consuls have several judicial functions: they investigate difficulties or crimes that have occurred in American

ships on the high seas; and they may hold a kind of court to examine charges of cruelty. In many partly-civilized countries, especially in Asia and the Turkish dominions, where Americans have no confidence in the local courts, consuls act as judges in cases involving two Americans or an American and a native. Such courts may actually condemn citizens of the United States to death for crimes committed in foreign countries, if the minister approves of the conviction. Similar powers are exercised in such countries by consuls of other foreign countries; but they have more distinctly defined jurisdictions, with opportunities for appeal to their home courts.

(3) Consuls have a variety of social functions not set forth in their instructions: they are expected to invite distinguished visiting Americans to dinner; to lend money to the American whose draft has not come; to recommend lodgings, and to quarrel with the proprietors if the tenants are dissatisfied. A former consul at Geneva declares that he was called upon to tell where real American chewing tobacco could be obtained, to forbid the French government to examine a lady's trunk at the frontier, and to decide how "bombshell" should be pronounced. The wise travelling American earns the gratitude of his consul and his minister by calling upon them only when he is in a difficulty from which an experienced official can and should help him out.

192. Treaties.

The treaty, or solemn agreement, between two countries is as old as history: a treaty between Corcyra and Athens brought on the Peloponnesian War. In colonial times, all treaties made by England were for the colonies as well as for the home country; thus, by successive agreements with France, the boundary of the English possessions in America was extended. During the Revolution the treaty-making power for the new states was by common consent vested in Congress, which commissioned ministers to most of the European courts, and in 1778 secured an inestimable treaty with France, under

which French ships and soldiers came over and made possible the military success of the Revolution. The treaty of peace of 1782 was the first of many agreements with England.

The treaty-making power of the Confederation was incomplete because it did not extend to commercial questions; but by the constitution of 1787 the power was made unmistakable, for the states were deprived of all control over commerce, and power was given to the president and Senate "to make treaties," a clause which is interpreted to mean treaties on any subject within the field of the federal government. Since that time about 300 treaties have been made and ratified, besides those that have failed. Among the most important agreements are the treaties of peace with France (1800), Great Britain (1814), Mexico (1848), and Spain (1898); the commercial treaties with England (1794, 1815, and 1854), China (1844), and Japan (1854); the boundary treaties with England (1818, 1842, and 1846); the canal treaties with Colombia (New Granada) (1846) and England (1850 and 1902); the German treaty on citizenship (1868); the Treaty of Washington settling the Alabama difficulty (1871). The United States has assented to various general treaties, such as postal conventions; and also to the agreement of 1885 on the Congo Free State.

When a treaty is negotiated abroad, a special commission composed of several persons is often appointed. For instance, Pinckney, Gerry, and Marshall were sent to France in 1797; the treaty of peace of 1814 was negotiated by five commissioners — Clay, Gallatin, John Quincy Adams, Bayard, and Russell; and that of 1898 at Paris by five commissioners — Day, Davis, Frye, Gray, and Reid — of whom three were members of the Senate.

Most negotiations, however, are carried on by our American minister at the foreign court, under instructions from Washington; or in this country by the secretary of state with the foreign minister. Of this latter kind are the treaties of 1842, 1846, 1871, and 1902, with Great Britain. In 1891,

when a conference was being held with representatives of Great Britain and Canada, Colonel Foster as a special commissioner made some statements which he said were authorized by the president; Secretary Blaine thereupon withdrew from the room, on the ground that as secretary of state the president's wishes should be made known only through him. In drawing up important treaties, it is common to write out a sort of journal of the conferences, known as a "protocol," in which appears a joint statement of what is proposed and answered, with copies of papers which are handed in.

No negotiations can be carried on except through persons officially accredited for that purpose by the president. In 1806 Dr. Logan attempted to get from the French government information which had been refused to our minister; the result was a statute making it a criminal offence for a private individual to assume any diplomatic functions with a foreign power.

Few treaties are ever negotiated without knowing beforehand the mind of the president on the general issues; nevertheless, if the negotiators come to an agreement and sign a treaty, it is not binding on the president, who may at his discretion stop it there, without referring it to the Senate. Thus, Jefferson held back the treaty with England in 1806; and President Cleveland in 1893 withdrew a treaty for the annexation of Hawaii, which was pending in the Senate when he came into office.

The constitution provides that treaties shall be made "with the advice and consent of the Senate . . . provided two-thirds of the Senators present concur." The word "advice" suggests that the president may consult the Senate in advance; and President Washington, in 1789, came personally upon the floor of the Senate and asked the advice of the Senate then and there. Somewhat fearful of the majestic presence of the great man, the Senate referred the matter to a committee; and that was practically the end of any attempt by the president to hold official personal council with the Senate. Still, every

prudent president discusses the chances of a treaty with his leading senatorial friends; and presidents occasionally sound the Senate by messages. Polk, in 1846, formally called upon the Senate to inform him whether it would ratify a compromise boundary in Oregon, and received the desired assurance.

If the president approves the treaty submitted to him, he then sends it to the Senate for ratification; there it is referred to the Committee on Foreign Relations, the chairman of which is really a sort of congressional secretary of state. If, as often happens, the committee is not interested in the treaty, it may remain for months unregarded, although the Senate has power to call it up at any time. The necessary two-thirds vote of the Senate has almost always been obtained for treaties of peace and for the adjustment of dangerous diplomatic controversies; indeed, the necessity of a two-thirds vote is so patent that a president seldom comes to an agreement with a foreign country without a reasonable assurance beforehand that the treaty will be ratified. In 1795 Washington, by his utmost personal influence, got a 24 to 12 vote for the Jay Treaty; in 1869 the Johnson-Clarendon Convention for the settlement of the Alabama question had only one vote in its favor. An interesting case is the treaty of 1844, for the annexation of Texas: it was held for six weeks by the Committee on Foreign Relations in order to affect a nominating convention, and then was voted down.

The Senate does not always accept the alternative of approving or rejecting a treaty: it often makes amendments, a step which of course involves a new discussion with the foreign country. If the amended treaty is accepted by the foreign power, it is not necessary to submit it a second time to ratification; if it is not accepted, the treaty fails. Such was the case with the Hay-Pauncefote Treaty of 1900, which was so amended by the Senate as completely to alter its tenor.

A treaty ratified by the Senate is still not valid till ratified by the other power: Thus, the Florida Treaty was hanging uncertainly from 1819 to 1821. When ratifications are once

exchanged, the president may still withhold the official proclamation; but the treaty is complete so far as the foreign country is concerned: a failure to carry it out would be good ground for diplomatic complaint, and might be a ground for war. Here arises the very important question of the relation of the House of Representatives to the treaty-making power. In 1796 a bill was introduced to appropriate money to carry out the Jay Treaty; the House called on President Washington to send explanatory papers, and he declined to do so, on the ground that he was under no obligation to explain his diplomacy to the House, since the treaty was already the law of the land. After a long debate, the House by the narrow vote of 51 to 48 made the necessary appropriation. The same question has been raised many times since. Sometimes a treaty contains a stipulation that it shall not go into effect until Congress has passed the necessary laws, and such a treaty with Mexico in 1883 failed because the House would not take action.

Of late years the House has been inclined to claim that no treaty which alters the duties on imports is valid without its assent, a difficulty which was avoided by the act of 1890, authorizing the president to make reciprocity treaties on certain conditions. But the president and Senate, under the constitution and the practice of a century, need no permission to make commercial treaties which alter the tariff, and they are subject to no special limitations: that power has been exercised at least fifty times.

A treaty supersedes a law; but a law of later date equally supersedes a treaty, as was shown in 1798, when Congress by statute declared all the French treaties invalid and extinct. It would be presumed that a general tariff law was not intended to supersede special treaty rights secured by foreign nations through concessions on their part; but it is perfectly competent for the president and a majority of both houses to destroy the effect of a treaty by hasty legislation. They did so in 1882, by passing an act to prohibit Chinese immigration,

in the face of a treaty allowing it. The only recourse of an offended foreign country in such a case is to protest that a contract with it has not been observed.

193. The United States as a World Power.

A discussion of our diplomatic machinery throws little light upon the question of the real place of the United States in international affairs. The original United States was a very feeble power, even in the conditions of the eighteenth century; it was not even the strongest power in America when it was created; and to this day, England has greater territory on the North American continent, besides many West India Islands.

A wonderful growth in population and resources speedily gave the United States the first place. By the annexations of Louisiana, West Florida, and East Florida, it made itself superior to Spain; after the Napoleonic wars France ceased to exercise much influence in America; and the British possessions have never had such population or wealth as to vie with the United States. Since 1815, therefore, the United States has been undisputedly the leading power in America, and none of the fragments of the former Spanish empire have ever shown the capacity to come abreast of this country.

The introduction of steam navigation across the ocean in the thirties brought us in time and cost of travel and transportation much nearer to Europe; and from about 1815 to 1860 we were negotiating commercial treaties with European powers and with other American countries. In the forties and fifties it looked as if the United States and Great Britain would amicably combine to control the Americas: the Clayton-Bulwer Treaty of 1850 was a recognition of England's equal interest in an isthmus canal; the Reciprocity Treaty of 1854 greatly stimulated commerce with Canada.

Meanwhile the United States was reaching out into the Pacific. About 1820, missionaries went to the Sandwich Islands; in 1844 we made the first commercial treaty with

China; the annexation of California immediately followed, giving us a more advantageous Pacific front than that of Oregon; and in 1854 we broke in the crust of Japan, and began trade with that country. In 1861 the United States was reaching east and west for trade and intercourse, and was recognized as the power upon the whole most concerned in Central and South American affairs.

The Civil War brought about difficulties and quarrels with both England and France; and it took ten years to settle the two questions of the Alabama claims and Mexico. The isthmus problem now returned; and it became evident that the American people had an ever stronger sense of their paramount interest on the continent. In the war of 1898, for the first time the United States decisively entered the Caribbean Sea by assuming the protectorate of Cuba and by annexing Porto Rico, thus acquiring points of military vantage in the Gulf of Mexico.

The United States in 1903 is by far the most powerful of American nations: it is firmly seated in the Caribbean Sea, is about to set foot on the isthmus, and has a vantage ground on the Asiatic coast; and it is accustomed to take part in international discussions. With great physical capacities, with a restless, energetic people who love to travel and to come into new experiences, the United States, by its annexation of the Philippine Islands in 1898, became an Asiatic power. Two years later, in the Boxer insurrection in China, it joined the other powers in recovering the ambassadors at Pekin, and came forward again and again as the advocate of moderation and of justice; and its influence was successful. Our relations with Europe are those of peaceful trade; but in any great crisis which may come to mankind in the future the United States must inevitably take a part as a world power, and that part is likely to be in favor of peace.

CHAPTER XXIV.

FOREIGN COMMERCE.

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195. Regulation of Shipping.

From the earliest days of the colonies, America has had a large trade with other countries, and this trade was never so flourishing and abundant as now. The federal constitution wisely placed the whole control of foreign commerce in the hands of Congress; and this power extends to the means of transport, to the movement of persons, and to the commodities carried, and is enlarged by federal jurisdiction over admiralty cases, and by the exclusion of the states from tonnage, and import duties, or export duties, other than for inspection.

Except across the Mexican and Canadian borders, all our commerce must be carried on by vessels; and in four ways Congress has protected American shipping. (1) It has laid discriminating tonnage duties. The tax was at one time eight times as much on foreign vessels as on home vessels; it is now on the two classes 3 and 6 cents a ton, not to exceed a total of 15 or 30 cents a year. (2) An act of 1793 prohibits foreign vessels from engaging in coasting trade; and a Supreme Court decision of 1901 held that trade with the dependencies was also coasting trade. (3) Duties on materials for shipbuilding are remitted, if the ships are to be used in foreign, or in Atlantic and Pacific, trade. (4) The duties on imports are somewhat increased if carried in vessels of a nation with which the United States has no agreement against discriminating duties.

In order to get the advantage of these and other privileges, a vessel must be built within the United States and must belong wholly to a citizen or citizens of the United States, and the officers must not be subjects of any foreign states. A foreign vessel wrecked on the American coast may receive an American register, if the repairs amount to three fourths of the value; and in 1892 Congress passed a special law authorizing the registry of two large foreign-built steamers, the New York and the Paris, for the American Line. These restrictions are sometimes evaded: occasionally a New England

fishing vessel puts to sea with an American captain and a Canadian cook, but when off soundings the cook commands the vessel and the nominal captain cooks the meals.

The actual tonnage of American vessels is enormous, for it includes the Great Lakes and coastwise trade as well as the transoceanic. In 1789 there were 201,000 tons; in 1809, 1,350,000 tons, or about seven times as much; in 1839, over 2,000,000 tons; in 1861, 5,500,000 tons, which was the high-water mark for 40 years; but in 1902 there were 5,800,000 tons. Yet the proportion of tonnage engaged in foreign trade, which till 1809 was two thirds of the whole, has steadily diminished, and in 1902 was only 900,000 tons out of 5,800,000 tons. At one time the United States carried over eight tenths of all our foreign imports and exports; it now carries less than one tenth.

The reasons for these changes are many. (1) Until about 1870 the model craft of the world was the wooden sailing ship, which could be produced more cheaply from the great American forests situated near tide-water than anywhere else in the world: when iron ships began to come in, they could be built more cheaply in England, where ore and coal lay near the seaboard. (2) In both coastwise and foreign trade, steam tonnage is now greater than sail tonnage; and until within a few years the English have been the most successful designers and builders of marine engines and boilers, and have developed the triple and quadruple expansion engines, with great saving of fuel. (3) The tariff upon ship-building materials has made it difficult to build American ships for sale abroad, or to compete with foreign steamers in foreign trade. (4) American ships carry larger crews and pay rather higher wages. In 1902, however, there was a consolidation of American ship-building concerns, with the likelihood that they will begin to build ships on a large scale in competition with the world.

The government aids shipping by enacting rules of the road at sea, in accordance with codes drawn up by international

conferences. The pilots are licensed and pilotage controlled by the states, except that pilots on coastwise steam vessels are commissioned by the United States, and such vessels are not liable to state pilot charges. The United States builds and maintains a magnificent system of lighthouses, buoys, and light-ships; it has surveyed the whole coast of the continental area, and publishes seamen's charts; it has an elaborate life-saving service, which patrols the coast, warns vessels off dangerous shores, and, in case of wreck, by life-boats and life-lines attempts to save the passengers and the cargo.

To prevent smuggling, an elaborate system of federal legislation provides for the formal entry and clearance of vessels; and all American vessels must be registered, and must carry special forms of enrolment for coasting and fishing purposes. The government also requires vessels to carry regular ship's papers, setting forth registry, port of departure, port of destination, owners, officers, and so on. Another series of statutes looks after the seamen, prescribing how they shall be shipped, how their wages shall be paid, and what their food and treatment shall be.

The most hotly-contested question with regard to American shipping is that of subsidies. Besides certain bounties granted to fishermen for the purpose of keeping up a nursery of American seamen for time of war, there have been three epochs of steamship subsidies. (1) From 1847 to about 1858 the Collins Line of American-built wooden steamers received for a time $858,000 a year for bi-monthly service to Liverpool, and the Bremen Line got $200,000 a year for monthly service. (2) From 1866 to 1876 the Pacific Mail Steamship Company received $500,000 a year for trips to China and Japan. (3) An act of 1891 was intended to build up a fast line to compete with the British White Star and Cunard Lines, and also to stimulate trade with South America. Subsidy-earners were divided into four classes, earning from 66 cents to $4 per mile of outward voyage; and under this contract an average of $700,000 a year has been paid since the inauguration of the

system. By the introduction of bills into Congress in 1901, an attempt was made to provide a general system of subsidy which would absorb about $9,000,000 a year for an indefinite period.

The arguments for a subsidy are: — (1) That it is not creditable to the United States to permit other people to carry its commerce. This argument of course applies equally to the other end of the line, and would at most call for an equal division of the traffic. (2) That a subsidy will act as a protective duty to both ship-building and ship-owning. It is, however, difficult to see that profitable lines now owned by Americans would make the country any richer by taking American registers. The great shipping combination of 1902, under the direction of Mr. J. P. Morgan, expected the business of ocean transportation to be profitable without a subsidy.

196. Regulation of Immigration.

The statutes on shipping contain elaborate provisions for passengers, and especially for steerage passengers, who once were shamefully crowded and ill treated. Since 1855 every passenger vessel, foreign or American, must assign sufficient cubic space for each person, and must allow suitable provisions. There is also a special system of inspection of steam vessels in order to prevent loss of life from defective construction or from explosions; and there are laws requiring life-preservers, boats, and other protections for passengers. These regulations apply to vessels leaving the United States as well as to those arriving, but there is a special system of law applied to immigrants.

In 1821 Congress required every vessel entering port to report the number of alien passengers, and after 1856 to make a separate return of those who intended to make their homes here; otherwise, with the exception of the Alien Acts of 1798 for the expulsion of foreigners, no law limiting immigration was passed until 1862. The temporary foreign visitors are

now about 20,000 every year. Of permanent immigrants there were about 8,000 in 1820, 84,000 in 1840, and 428,000 in the great year of 1854. During the Civil War, immigration fell off; but in 1866 it began on a large scale, and in the record year 1882 789,000 foreign immigrants were registered as entering the country. In 1898 this number fell to 229,000, but in 1902 it was 649,000. In the decade from 1892 to 1902 about 3,800,000 foreigners settled in this country.

Relatively to population, the present number of immigrants is about a half what it was sixty years ago; and the railroads make it easier to distribute 600,000 in 1902 than 100,000 in 1842. The serious matter is that there are now fewer immigrants from England, Scotland, English Canada, Germany, Holland, and the Scandinavian countries, — that is, from the people most like the native Americans and hence easiest to amalgamate, — while there is a great increase in those from Italy, the Russian empire, and Austro-Hungary, the people most remote from our way of thinking. The English immigrants were 82,000 in 1882, and 14,000 in 1902; the Germans were 207,000 in 1854, and only 28,000 in 1902; the Scandinavians were 105,000 in 1882, and 54,000 in 1902; the Italians were 3,000 in 1876, and 178,000 in 1902.

The change of quality in the immigrants, and a prejudice against the coming in of workmen to compete with those already on the ground, have led to various attempts to restrict immigration. (1) In 1862 Congress dealt with coolie immigration, especially the Chinese. (2) In 1882 was passed an immigration act prohibiting the coming in of idiots, lunatics, convicts, and persons likely to become charges on the public. (3) In 1885 came the Alien Contract Labor Act, which made it unlawful for persons to enter the United States if under contract to perform labor here when they arrived; exceptions were actors, artists, lecturers, singers, domestic servants, and workmen skilled in new industries. This act has been difficult to execute, because a contract laborer does not wear a badge to distinguish him; and attempts have been made to shut out

clergymen and professional musicians on the ground that they were contract laborers. (4) In 1882, in defiance of the existing treaty, Congress passed an act prohibiting Chinese laborers of any kind from coming in. (5) In 1891 an immigration act was passed prohibiting polygamists and diseased persons from landing; and an official, "the superintendent of immigration," was put in charge of the service. (6) Many people having taken alarm at the continued immigration of foreigners, in 1897 a law for the exclusion of adults who could not read and write, at least in their own language, passed both houses of Congress, and was vetoed by President Cleveland. (7) In 1882 there was imposed a tax on immigrants of 50 cents per head, which was raised to $1 in 1894 and to $2 in 1903. (8) In 1903 the immigration of anarchists was prohibited.

The apparent effect of these various laws is not great: in 1902 the exclusions were: convicts, 9; insane, 27; idiots, 7; paupers, 3,944; contract laborers, 275; diseased, 709; other causes, 3; total, 4,974. The real effect is much greater: first, because unfit persons hesitate to incur the long voyage with a prospect of exclusion; and, secondly, because the steamships must carry excluded persons back at the expense of the owners, and hence they are active to keep out people who are likely to be thrown back on their hands. In practice, the test that a man shall be able to take care of himself is that he shall have fifteen dollars in his pocket; and friends in the steerage often combine to form a pool, so that nobody shall be devoid of this necessary sum.

Really effective has been the prohibition on Chinese immigration. Beginning about 1855, 3,000 or 4,000 Chinese came in every year until 1868, when large numbers were imported to work on the Central Pacific Railroad; then the numbers began to increase, and in 1882 the immigration was 40,000. Congress then interposed, with the result that in 1885 only 22 Chinese were recorded as entering the country, and from 1880 to 1900 the total number of Chinese here decreased by 16,000.

The reason for the exclusion of the Chinese was partly the prejudice of European laborers on the Pacific coast, who disliked the competition; partly the demand of nearly the whole community on the Pacific slope; and partly the conviction of Congress that a large immigration would ultimately lower the scale of living and unfavorably affect the lowest stratum of the white population. The Chinese already in the country form useful household servants and laborers and laundrymen; but all experience goes to show that, although a very habile people, they have so different a mode of thought and so different a social organization that they never could become a permanent part of an American community. The legislation of Congress has saved the Pacific Coast from a social difficulty akin to the negro question in the Southern States.

197. Movement of Foreign Commerce.

One of the principal reasons for establishing the American colonies was to furnish an outlet for European trade. As the colonies had very few manufactures, they always depended on Europe and especially on England for fine clothing, for manufactures of metals, and for many other commodities. Their only means of paying for these importations was by exportations of domestic produce, especially timber, fish, grain, tobacco, and pig-iron. A lively, though usually a forbidden, trade to the Spanish and French West Indies brought hard specie, which helped to adjust balances with England.

After the Revolution the United States became a heavy exporter of food products, and during the Napoleonic wars a large commerce was built up, in which the imports usually far exceeded the exports. For instance, in 1810 we imported $61,000,000 and exported $42,000,000; the difference probably represented the earnings of the American shipping trade. Then came a period of heavy loans from abroad, which really came in the form of excess of imports over exports. In the forties and fifties, considerable trade balances were for the

first time established in our favor, which meant that the old debts, public and private, were being paid. Up to 1850 the combined exports and imports were not over $300,000,000 in any one year; but they began to run up, and in 1860 were $700,000,000.

The development of the internal railway system now made it possible to bring forward immense quantities of breadstuffs and other commodities from the interior; and a new and enormous export business was built up in kerosene. Hence, from 1876 to 1902 there has been only four years when the trade balance was not in favor of the United States. In 1882 the combined export and import trade reached $1,500,000,000; and in 1902 it was $2,300,000,000, of which $1,400,000,000 were exports and $900,000,000 were imports.

From the beginning, Great Britain has always been our best customer, taking $549,000,000 in 1902; Germany is now second in importance, taking $173,000,000; next come the British provinces, with $111,000,000, and France with $72,000,000. We imported in 1902 $166,000,000 from Great Britain, $102,000,000 from Germany, and $83,000,000 from France. The exports to Central and South American countries, all told, are less than $100,000,000, and the imports about $170,000,000. The export trade to the various parts of Canada is worth more than to all the rest of America, excluding the West Indies.

The most important exports are (1) raw cotton, of which we sent out $291,000,000 worth in 1902; (2) breadstuffs, principally corn, wheat, and wheat flour, to a value of $213,000,000; (3) provisions of various kinds, to a value of $200,000,000, or, if live cattle be added, about $230,000,000; (4) manufactures of iron and steel, $99,000,000; (5) oil, about $72,000,000. Of late years there has been a great increase in the export of general American manufactures, amounting, besides the articles already mentioned, to about $200,000,000. Of the imports the largest items are clothing and materials for clothing, about $100,000,000; coffee,

$71,000,000; chemicals, $58,000,000; hides, $58,000,000; sugar, $55,000,000.

How is the surplus of exports over imports to be paid? In part by the expenses of the 120,000 annual American travellers abroad, probably amounting to $100,000,000 a year; a part of the surplus goes into ocean freights; and foreign investments in American railroads and other securities have been transferred westward to help the balance. Yet enormous sums remain to our credit abroad, which are practically a capital controlled by American owners: for instance, in 1902 an American obtained large concessions for building new traction lines in London, the money for which was the proceeds of exports.

A new movement of commerce seems likely to spring up with the Pacific. In 1902 our exports and imports with China were $25,000,000 + $21,000,000; with Japan, $21,000,000 + $38,000,000; with British Australasia, $28,000,000 + $5,000,000. The trade to the Philippine Islands was about $5,000,000 + $7,000,000. In all, the Pacific region and Asia received about $98,000,000 from us, and sent about $144,000,000 to us. If China can develop her internal resources and build railroads, this trade may be many times multiplied; and it is with ultimate reference to the Asiatic trade that the United States took over the Philippines. Trade with our American neighbors might also be increased: Central and South America have a total trade of nearly $1,000,000,000, of which at present we do not get one fourth.

It will be noted that the extension of American commerce depends upon the tariff policy of the country. If a high tariff is necessary in order to maintain domestic manufactures, that result can be gained only by diminishing foreign trade, for true protection prevents the importation of foreign goods; and since in the long run our exports must be paid for by imports from abroad, whatever diminishes imports must in the end cut down our market. A high tariff also provokes reprisals from other nations, which take steps to check impor-

tations from America, either by laying high duties or by passing vexatious inspection laws.

198. Our Commercial Neighbors.

The problem of foreign commerce depends upon many factors, of which a chief one is the method of transportation. A century ago the approved type of merchant vessel was a heavily-rigged sail craft, of from 200 to 600 tons, owned by a private firm, or frequently by the country merchants and farmers who built her; and she went wherever she could find a cargo. As there was no telegraph, and mails were slow, the captain or the supercargo had large discretion in buying and selling. Later on, regular packet lines were established despatching ships at stated intervals; and in the great days of the American clipper ships, in the fifties, those regular lines reached to Australia, China, and California, as well as to England and the continent of Europe. Sailing voyages are recorded of fourteen days from land to land across the North Atlantic.

These sailing ships have been partly superseded by steam vessels: the Cunard Line in 1840 set up a regular bi-monthly service from Boston to Liverpool, and lines were slowly established from Baltimore, Philadelphia, and New York. Soon appeared steamers, now generally called "tramps," which, like the sailing ships, carried cargoes wherever they could find them. In the course of the years since the Civil War, the regular steamship lines have enormously expanded, till some of them despatch three or four steamers a week. The owners of the Pennsylvania Railroad and the Standard Oil Company have established three lines of steamers, — the American Line, the Red Star Line, and the Atlantic Transport Company, — which of course are more likely to get full cargoes than if they were not directly connected with exporting and transportation companies. In 1902 a consolidation of seven or eight of the largest ocean lines was brought about, with the expectation that economy of service could be gained by common and

intelligent ownership. The tramp steamer, which represents the old type of progressive and independent business, is now actually derided and treated as a poacher in the domain of foreign commerce; but as long as the high seas remain free the tramps will always exist to keep up competition in transportation.

The development of steamships much affects our commercial relations, because the improved and fast vessels bring the countries of the earth much nearer to us in time and expense of transit, especially in the great current of commerce from the eastern coast of the United States to the western coast of Europe. With the large steamers of to-day, however, foreign trade is concentrated in the few harbors which can admit deep-draft vessels; hence Portland, Boston, Philadelphia, New York, Baltimore, Newport News, Charleston, New Orleans, and Galveston get almost the whole of the transatlantic trade. Conditions are similar on the other side of the water: Liverpool, Southampton, London, Havre, Antwerp, Rotterdam, Bremen, and Hamburg receive most of the American trade, except the rapidly-growing commerce into the Mediterranean. The countries bordering on those ports must be our best customers, and with them we should cultivate friendly commercial relations.

In America our nearest commercial neighbors are the West Indies. Porto Rico is ours, and Cuba is a protectorate of the United States; the Island of Hayti is politically so disturbed that its trade is now of little account; Jamaica is the only other considerable West India island, and the United States Senate declines to ratify a reciprocity treaty in behalf of that island. Mexico is reached from the United States by land as well as by sea: the railroads of that country have been constructed by American capital, and it is practically a commercial dependency of the Union; as Mexico develops, the United States is likely to get more and more of its trade.

The Central American states are capable of a valuable coffee and sugar and fruit trade, but are subject to revolutions and

earthquakes, and have no sufficient railroads. The South American countries are very distant: Rio de Janeiro is nearly twice as far from New York as is Liverpool; and, until the Panama Canal is constructed, the west coast of South America is almost as far away as New Zealand. The United States has shown no strong desire to encourage trade with any of those countries by reciprocal reciprocity agreements.

Upon the northern border of the United States lies the Dominion of Canada, which has water connections from the maritime provinces to the coast of New England and New York, and a common boundary about 3,500 miles long. Trade with Canada has always been heavy, and from 1854 to 1866 was regulated by a special reciprocity treaty, under which it greatly increased; but since 1866 the trade has been subject to the same restrictions as that of other countries. The Canadian Pacific railroad system crosses the state of Maine, and an American system crosses Ontario from Buffalo to Detroit. There is a very free movement of population across the border from French Canada into New England, and from the Northwestern states into the Canadian Northwest. The very nearness of Canada, however, has always brought about boundary trouble and commercial jealousies, and the two countries are not very neighborly.

CHAPTER XXV.

WAR POWERS.

199. References.

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200. History of American Wars.

The most serious and disturbing relation between nations is war. To the national government are committed the great powers of raising armies and navies, declaring war, and adjusting the results by treaties of peace. The states are absolutely

prohibited from keeping troops or ships of war in time of peace, or from engaging in war unless actually invaded, — a case which has occurred only once, in 1814.

As soon as the colonies were founded, fierce conflicts began with the Indian tribes, and from 1620 to 1763 the colonies were engaged in all the contests of England with France, Spain, and Holland. The American nation was born in the midst of war, which the feeble organization of the Continental Congress managed to conduct to a successful end; and in that war, for the first and last time in our history, we had a military ally. The wars of the United States since the Revolution have been of four kinds: Indian, external expeditionary, foreign, and civil.

(1) About 1775 began the series of Indian wars, which were characterized by the usual Indian tactics of ambush, surprise, and torture of prisoners. Sullivan forever destroyed the power of the Iroquois in Central New York in the campaign of 1779. From 1790 to 1795 the Indians fought fiercely in the Northwest, and in 1791 St. Clair's army was all but annihilated. In 1811 came the most dangerous Indian war in our history, — Tecumseh's league on the northwestern frontier, — in which the battle of Tippecanoe was won by General Harrison. General Jackson was engaged from 1815 to 1818 in wars with the Creeks of the Southwest. In 1832 came the brief Black Hawk War in the Northwest; and in 1835 began the long and costly Seminole War, in which about 100 Indian warriors defied the whole United States.

The great movement across the plains, beginning in 1849 and culminating in the completion of the Pacific Railroad in 1869, brought the people of the United States into hostile relations with tribes theretofore little known. In 1862 came the Sioux outbreak in Minnesota, which for a short time threatened to sweep the whole frontier. There was repeated fighting on the Upper Missouri River; and then came, in 1873, the wonderful campaign of the Modoc Indians, who for a long time held their own against forces twenty times their number.

The last Indian tribes to make a determined resistance were the Apaches in New Mexico and Arizona, and they were finally subdued in 1886. From 1899 to 1902 a very similar epoch of war with dependent races went on in the Philippine Islands.

Altogether the Indian wars, many of which might have been avoided by greater tact and a more rigid sense of justice, have cost probably $200,000,000 and 10,000 lives of white troops; but it is difficult to see how a fierce and warlike race, prime owners of the soil, could ever have been brought within the peaceful control of the government without a good deal of hard fighting. The Indians are now so broken up into small masses, and so surrounded with white population, that further wars are impossible.

(2) The United States has first and last engaged in about fifty armed military expeditions outside its own boundary. West Florida, East Florida, Texas, and California, all saw hostile American troops before they were annexed. Naval expeditions have been repeatedly sent to the Pacific islands, to Central and South America, and to Eastern Asia, usually as substitutes for regular military operations, in order to obtain settlement of controversies.

(3) Of foreign wars, the United States has had six: the War of the Revolution with England, resulting in independence; the two naval wars, — with France from 1798 to 1800, and with the Barbary Powers from 1802 to 1805; the War of 1812 with England, the most humiliating episode in our national history; the aggressive Mexican War of 1846, the purpose and result of which was the annexation of California; the war with Spain, lasting from April to August, 1898, which brought about the cession of Porto Rico and the Philippines and the independence of Cuba.

(4) Most terrible of all our wars was the Civil War, which lasted from 1861 to 1865, and, at an expense of $7,000,000,000 of property and about 700,000 lives, established forever the principle that the United States is one nation.

201. The Army.

Of the two branches of the service, the army has always been the more important, because more numerous than the navy, because the only force available for fighting the Indians, and because in the four protracted wars — Revolution, War of 1812, Mexican War, and Civil War — the decisive actions were on land. At the head of both army and navy is the president, who is titular commander-in-chief, though no president has ever actually taken the field at the head of an army. He exercises his power by designating officers to particular commands, and by giving them instructions. Under the president, the civil head of the administration is the secretary of war. Contrary to continental practice, our minister of war is almost never an army officer; and in several cases, as in 1814 and 1860, he has been obliged to resign from want of practical experience in the profession.

The body of officers in the army are appointed by the president and confirmed by the Senate. The military school at West Point has sometimes been insufficient to supply the need, and lieutenants and even higher officers have been appointed directly out of civil life; in many cases men are promoted to commissions from the ranks. In time of war large numbers of officers have to be commissioned, and appointments are then made out of the officers of militia regiments, or directly out of civil life.

During peace it is the tradition that officers shall be promoted as vacancies occur, so that any lieutenant who lives long enough and does not get court-martialled may become a colonel, or, if selected by the president, a brigadier-general or a major-general. Indeed, army officers have a fixity of tenure not given to other executive servants: by an act of 1866 it is provided that no army or navy officer shall be removed in time of peace except by court martial. Nevertheless, if the president appoints and the Senate confirms another man to fill the same position, the previous incumbent is thereby removed;

and in time of war the president may summarily remove, subject to later investigation. In peace, resignations are accepted unless made to avoid court martial. During war, resignations are frequently denied; but at the beginning of the Civil War about one half of all the military and naval officers resigned their commissions because southerners.

Inasmuch as vacancies by death and resignation are few, an officer may not get above a captaincy till he comes to be fifty years old. In the army, by acts of 1861 and 1862 and subsequent amendments, the president must retire from active service any officer who is sixty-four years old, and may retire an officer who has served forty-five years or is sixty-two years old; and any officer may demand retirement when he has been forty years in the service, or has become disabled, and may request retirement after thirty years of service.

In the navy compulsory retirement comes, except for the admiral, when an officer is sixty-two or has served forty-five years, and retirement may be requested after forty years of service. Further, the law of March 3, 1899, provides that if the vacancies in any year are below a certain number in each grade, the president selects from those officers of the rank of captain and below who desire retirement, or orders the involuntary retirement of such officers of the rank from captain to lieutenant as are pronounced by a board of rear-admirals to be most unfit for active service. This measure is intended to provide for the proper promotion of the best officers, by weeding out the least efficient. Officers thus retired receive the rank of the next higher grade. Retired officers, during the remainder of their lives, receive three fourths of the pay of their rank at retirement. In many cases the disability is not such as to prevent service in other capacities, so that retired army and navy officers are often active business and professional men.

The grades of officers are general and lieutenant-general (titles which have been given as honorary distinctions to men of the highest service, such as Winfield Scott and U. S. Grant), major-general, brigadier-general, colonel, lieutenant-

colonel, major, captain, first lieutenant, second lieutenant. The pay runs from $13,500 a year for a general, down to $1,400 for a second lieutenant of infantry. Quarters are furnished for officers and their families, and there are some other privileges which reduce personal expenses.

The army of the United States numbered but a few hundred men in 1789, and has remained small except during actual war. In 1898 it was only 26,000 men and 2,175 officers, a number barely sufficient for garrison duty and for keeping order. After the Spanish War, by an act of February 2, 1901, the army was fixed at 3,820 officers and not to exceed 100,000 men. In 1903 there were 65,000 enlisted men. There are now 1 lieutenant-general, 7 major-generals, 24 brigadier-generals, and 102 colonels, besides about 100 officers retired with the rank and retiring allowance of a lieutenant-general, major-general, or brigadier-general.

The army is recruited out of men between the ages of eighteen and thirty-five, who satisfy a severe physical examination and are more than 5 feet 4 inches high. The material coming forward is on the whole good; and foreign officers who have observed American troops in the field usually praise their intelligence and courage, and approve the discipline. Life upon small frontier posts is very trying to both officers and men, and in time of peace desertions are alarmingly numerous. The pay of private soldiers is $13 a month, rising to $16, in addition to barracks and food. The actual cost of maintaining a full regiment of 1,000 men for a year, including pay of officers and men and the expense of administration, is about $1,000,000, which is five times the cost of a German regiment of the same size.

The ordinary peace duty of the army is to garrison the military posts and fortifications, nearly all of them on the seacoast; to protect government officers and property in Washington and elsewhere; and, above all, to act as a reserve force in case of riots and insurrections which the state authorities cannot manage. The army and navy are governed by elaborate

codes called Articles of War, and "Regulations" which deal with organization and discipline, prescribe rules for behavior in the field, contain humane provisions for the benefit of non-combatants, and provide for courts martial (the death penalty to be applied only with the specific approval of the president).

One of the problems in both military and naval service is the distinction between the staff and the line. Modern armies and navies, especially the German, have a special branch of the service called the "general staff," which has centralized control over all the administrative services, such as commissariat, transportation, ordnance, clothing, medicine and hospital, and intelligence. In Berlin, young officers are selected by fierce competition, and then are specially trained for this important service. The German general staff also works out, in advance, plans for every conceivable campaign: for any contingency, the necessary orders for concentration of troops on the frontiers are already written, and on forty-eight hours' notice large bodies of organized troops would be on their way to meet the danger.

The administrative system of the United States army has been inferior in two respects. (1) The different branches were placed under bureaus independent of each other: for instance, the commissary-general had to provide supplies, but could not compel the head of the transportation department to carry them. (2) The "staff officers" are not trained especially for their posts, but are detailed out of the "line," — that is, out of the ordinary service, — and usually serve but a few years in their administrative posts. Every war in which the United States has been engaged, and especially the Spanish War, has shown the folly of this system: line and staff officers are jealous of each other; staff appointments are coveted, and political pressure is often used to secure them; and neither the secretary of war nor the head of the fighting forces has sufficient control over the administrative part of the army.

By an act of February 14, 1903, a general staff was at last created. The staff of forty-five officers, detailed from the army at large, is to prepare plans of defence and mobilization, investigate and report on the efficiency of the army, coördinate the action of the different departments, render professional aid to the superior officers, and perform such other military duties as the president may require. The chief of staff has supervision over both the line and staff, and has in general, with an enlargement of powers, the duties of the commanding general.

A part of the American military and naval staff is an intelligence department, of which the public naturally knows little. As an incident of such a collection of information, it is the habit of the government to send officers as military attachés to our foreign legations, that they may pick up new ideas. Unfortunately, American officers are often detailed who cannot speak the language of the country to which they are sent, and hence are not in a position to improve their opportunities. When war breaks out anywhere in the world, it is also common to send some distinguished American officer to observe it on the ground: in 1871 General Sheridan went to France, and in 1878 General Hazen to the Russo-Turkish War.

202. The Navy.

The navy is in many respects a very different service from the army, principally because the tactical unit of the navy is a ship, which must be kept up, coaled, drilled, and exercised in time of peace exactly on the same footing as in time of war. A second difference is that the conditions of naval warfare in the last forty years have radically changed, and the navy has responded to the new necessities.

During the Revolution, Congress succeeded in fitting out several small squadrons, but there was no permanent organized navy; most of the fighting at sea was done by privateers, which were ordinary merchant vessels transformed into cruisers. After the Revolution was over, the United States at

one time had not a single armed ship on the ocean. Construction began in 1794, and in the war with France in 1798–1800 there were a few ship duels. The new vessels were very serviceable in the war with the Barbary pirates (1802–1805), and during the War of 1812 the Constitution, the Constellation, the United States, the Essex, the Enterprise, and the little Wasp showed that they could successfully fight British vessels of their class; but until after the War of 1812 the United States never possessed a single one of the great three-decker ships of the line, which were the standard battleships of that time.

The American navy remained small, and when the Civil War broke out we had not half a dozen first-class steam cruisers; and one of the best of these, the Merrimac, was transformed into the Confederate ironclad, the Virginia, which began to destroy our wooden fleet, and was successfully resisted in 1862 by the little iron Monitor. This duel led to a new era in naval architecture: we built a fleet of river gunboats and sea-going ironclads. After the war, the United States navy was again allowed to become antiquated. About 1883 began the construction of vessels of a modern type; and the United States has now, either completed or under construction, a fleet of powerful ships, surpassed in number, guns, and men only by those of Great Britain, France, Russia, and Germany.

The general organization of the navy is similar to that of the army: the officers are appointed, commissioned, and retired in the same way, though the number is smaller. There are now 1 admiral and 24 rear-admirals, besides 58 rear-admirals on the retired list, and 5 officers retired as commodores; then come captains, commanders, lieutenant-commanders, lieutenants, lieutenants (junior grade), and ensigns; besides officers of the medical, pay, and engineer corps, and various officers of construction and instruction employed on shore duty. The pay of officers ranges from $13,500 for admirals down to $1,400 for ensigns; the pay of seamen

varies according to age and experience, from $35 per month for firemen of the first class, to $9 for apprentices of the third class. About 70 per cent of the enlisted force in the navy are native-born, and about 90 per cent citizens of the United States. At present the authorized strength of the navy is about 29,000 men and 1,676 officers.

The largest and most powerful vessels of the navy are of the Maryland and Pennsylvania type, each to carry 777 men and 45 officers; and of the Oregon and Kearsarge type, with armor up to 18 inches thick. Such a vessel ready to receive its men costs from $5,000,000 to $6,000,000. The vessels in commission December 1, 1901, were about 100, of which 20 or more were powerful battleships.

Administratively the navy is better organized than the army. During the Spanish War, the secretary of the navy designated the so-called "Board of Strategy," which was a council of naval officers of distinction acting as a general staff for the discussion of naval movements. Its place is now taken by a permanent "General Board."

Both army and navy make special details of officers, not only for staff service, but for a variety of inspection services away from commands. The navy details are mostly for shore service. Many army and navy officers, at sea or detailed, carry on professional study, invent weapons and fortifications, and advance military science.

In recent years a peculiar difficulty has arisen in the navy because a steam-fighting vessel, besides its engines, contains delicate machinery of every kind,—ammunition hoists, torpedo tubes, special engines for opening and closing shutters, for rotating turrets, and for handling coal. The care of such a complex vessel requires highly-skilled direction, for which the naval academy at Annapolis has for some years prepared engineers. These graduates knew little of ordinary sea duty; on the other hand, the navigating officers, responsible for fighting a ship in action, might be wholly unable to judge whether the engines were in suitable condition for battle. By

an act of March 3, 1899, Congress provided that all naval officers should have training both in seamanship and in engineering, so that they might be able to supervise both of these important parts of modern naval warfare.

The functions of the navy are simple: about half the vessels in commission are sent to foreign waters for the protection of American interests, and render important service by explorations of various kinds; and, in case of need, marines and "jackies" are landed in distant countries like China or Central America. Naval officers have more contact with the rest of the world than military officers: they constantly see new types of vessels and guns, and bring home new ideas; three years is considered by the practice of the department long enough for sea duty, and then other officers are sent out; the home squadrons move about from port to port, exercising the men, and making people acquainted with the service.

203. Education of Officers.

To provide the necessary body of educated officers, the federal government has founded several institutions. In 1802 a military school was established at West Point, and has become one of the most effective places of its kind in the world. It has grown in numbers as the country has advanced, has a large plant of buildings and necessary grounds, and has turned out several thousand excellent officers. The effectiveness of the school is shown by the fact that, in all the wars from 1812 down, the graduates of West Point have come to the front: all the greatest commanders in the Civil War — Grant, Sherman, Thomas, Sheridan, Lee, A. S. Johnston, Joseph E. Johnston, and Stonewall Jackson — were West Pointers. Many graduates eventually get into civil life, and are much esteemed as civil engineers, administrators, and men of affairs.

The cadets of West Point are appointed by the president, but under the law must be nominated by members of the House and Senate; there is one for each congressional dis-

trict and territory, besides two for each state, and thirty at large appointed by the president. Appointment means merely that a boy will be entered if he passes the somewhat severe entrance examinations. In 1902 482 cadets were authorized, and the school had about 425 present, but in 1903 the authorized number was increased for ten years to 511.

Once admitted, cadets become officers of the United States army, and receive $540 a year as pay. They are organized as a military body, with cadet officers appointed for merit by the superintendent of the institution; they have rigorous drill and thorough military discipline, besides annual camp experience for about three months. The teaching force is about seventy strong, partly of detailed officers and partly of permanent professors; and the curriculum is narrow, but thorough. The constant effort of the instructors is to train the men to obey orders, and at the same time to bear responsibility and to speak the truth. About half of the students admitted cannot stand the pace, and drop out before the end of the four years' course; those who persevere and graduate are all immediately commissioned as second lieutenants.

The need of a similar school for the navy was long felt, and in 1845 George Bancroft, then secretary of the navy, designated certain officers to give naval instruction at Annapolis; and thus without a law began the Naval Academy. It has since been organized by statute on about the same basis as West Point. Nominations are made by members of Congress, until 1913 two for each senator, representative, and delegate, and two from the District of Columbia, while the president has five appointments at large each year. The course is six years, two of them at sea, and now includes training in engineering. Corresponding to the West Point camp is the annual cruise of the cadets. All the naval officers are graduates of the Naval Academy, except the few who have come in through the volunteer navy, and a very few who have been promoted from the "warrant officers." The constant shifting about from one ship to another gives the naval officers personal acquaintance with

each other, so that there is a much stronger tradition of common education and of *esprit de corps* than in the army.

An attempt at a kind of military education has been made by the state agricultural colleges, which are required to keep up military drill; but in most cases it is a perfunctory matter, affording no real military training. Private military schools throughout the United States accustom boys to military routine; and graduates of those schools are likely to get commissions in the volunteer army in case of war. The government also maintains post-schools for the education of privates, especially those who cannot read or write.

The highest institution of military training in the country is the Naval War College at Newport, founded by Admiral Luce in 1885. This institution, at the head of which is always a highly-experienced and competent naval officer, gathers every year about twenty-five of the best officers in the navy and marine corps for the practical study of naval problems; they work out plans of campaign, and by the use of the "kriegspiel" — a practical means of actually going through the details of a campaign on a small scale — they get a valuable training in the most difficult part of their profession, the disposition of ships and troops in warfare. A similar Army War College was established in Washington in 1902.

Next to a better organization of the staff, the greatest need of both army and navy is practical training in the handling of large bodies of troops. The technical unit of the army is the regiment of 1,000 men; but within the limits of the United States there is not a single post where a whole regiment is stationed. Gray-headed brigadier-generals have sometimes never seen a whole regiment together under their own command; and the Spanish War showed that men in command of brigades or divisions did not know how to handle 5,000 or 10,000 troops, even in practice. What we need is to assemble every year 20,000, 30,000, or 40,000 troops on the plan of the foreign manœuvres, to make long marches, and to go through sham battles; and, since our future wars are likely to include

operations beyond seas, the navy should be called on to convey animals, guns, wagons, tents, and other materials from one part of the coast to another. In this way, both branches of the service would get accustomed to the difficult operations of ferrying an army and landing in force.

204. The Militia.

The whole tradition of the United States is against a large standing army, because in the experience of mankind such armies have proved the bulwark of despotism: as late as 1851 Louis Napoleon made himself the emperor of the French by winning over the army. Hence the colonies had no permanent force of troops, but depended upon the able-bodied men of the community. In the Revolutionary War was made the first attempt to create a national army; but the states disliked it, and most of the forces throughout that war were regiments enlisted and officered by the states. This system was continued by the federal constitution, which authorizes states to train militia according to the discipline prescribed by Congress, and to appoint officers.

Technically, the militia, or citizen army, is made up of all the able-bodied men of the state, every one of whom is liable to military duty. A century ago, "training-day" brought out most of the men of the community; they had a little military drill and a great deal of hard liquor. In the course of years the states have all given up any attempt to organize the whole body of available men, but keep up a few regiments, especially in the large cities. The organization is in many ways like that of a club: men join and resign much at their pleasure; the minor officers are elected by the men, the higher officers are appointed by the governor or by a board of officers. In a few states, as Massachusetts and New York, there are regiments enough to make a brigade, and annual encampments are held, in which the men live in tents and have company and regimental drills and brigade evolutions.

The main immediate service of the militia is, however, to act

as a state police force on call of the governor in case of riot or insurrection. The nominal militia force is sufficiently large, — 11,000,000 men liable for military service in the states; about 200,000 enrolled in organizations; general officers to the number of 1,000; but the powerful state of New York has actually only 14,000 militiamen, Illinois has 7,000, and Massachusetts something over 5,000. There are also naval militias in nineteen seacoast or lake states, with about 5,000 men and officers. Attempts have been made to give them militia experience on board regular cruisers; but so far they have had little training.

It is in war that the militia ought to be most useful, but in all our wars the defects of the system have been painfully manifest. The states have frequently shown themselves inefficient in recruiting and organizing troops; the officers are commissioned by the governors, in many cases because elected by the men of the companies; and when brought into the federal service the whole material has had to be worked over, so as to get rid of incompetents. The arms and equipment of the militia when they enter the service are scanty and imperfect. Then, too, the states will not keep their regiments full during war, because they prefer to organize new regiments with new sets of officers. In the Civil War, hundreds of regiments in 1864 were reduced to 200 or 300 men each, with an unreasonable number of officers; General Sherman, in 1862, complained, "More than one half the paper army is not in the enemy's country." With such forces, it was difficult to enforce the plainest principles of discipline.

In the War of 1898 the same difficulties were encountered: the regiments from some states came fully armed, equipped, and drilled, ready for immediate service, while others were raw levies unaccustomed to discipline and very impatient of it; months had to be spent in instruction camp; and the men were not used to caring for themselves on the march, as regulars can do. A better system would be for the general government, in time of war, to organize a service of auxiliary regulars, enlisted for the war, officered so far as possible by men of mili-

tary experience, appointed by federal authority entirely, and numbered as United States regiments. The "Dick Law" of Jan. 21, 1903, provides for more efficient organization and inspection of the militia.

205. Carrying on War.

The existence of war is commonly set forth by act of Congress. In 1846 President Polk asserted that "war existed by the act of Mexico"; but Congress nevertheless made a formal declaration of war, as it did in all the other foreign wars except that of 1798. The importance of the question is simply that, after a declaration of war, every subject of the foreign country becomes an enemy. In 1861 Congress took the ground that there was no war, but simply military force used to execute the laws of the Union; but by proclamations of blockade in April, 1861, the president practically recognized the existence of war, in which each of the parties had the usual belligerent rights.

In its various wars the United States has had about the following number of enlistments: Revolution, 230,000; War of 1812, 145,000; Mexican War, 44,000; Civil War (Northern side), nearly 3,000,000 enlistments involving more than 2,000,000 individuals; Civil War (Southern side), 2,000,000 enlistments involving 1,000,000 individuals; Spanish War, 300,000.

In time of war, troops are raised in three different ways. (1) By enrolment of regular United States troops. Until 1898 Congress was at all times very reluctant to increase the federal army; but in 1899 it authorized 100,000 soldiers and 25,000 sailors, in 1901 it established a permanent peace footing of not more than 100,000 soldiers, and in 1903 increased the navy to about 29,000 men.

(2) By calling on the states to furnish troops, under the clause authorizing the president to call out the militia "to suppress insurrections, repel invasions, and execute the laws of the Union." In 1812 several New England states refused to permit their militia to obey the call, on the ground that there was no invasion; and the administration was unable to help

itself. The federal government appoints the general officers; but a considerable number of the state generals always receive federal commissions, and in all our six wars many civilians have received commissions as generals.

Militia and civilian officers do not always work well. When Washington came to Cambridge in 1775 he wrote thence to a friend that he had "made a pretty good slam" among the militia generals he found there; but in the War of 1812 the two most distinguished soldiers were Jacob Brown of New York and Andrew Jackson of Tennessee, neither of whom had expert military training. In the Mexican War, however, there were plenty of trained officers, and some civilian commanders, among them Franklin Pierce of New Hampshire, later president of the United States.

In the Civil War scores of civilians were made generals, passing over experienced soldiers who had captains' or majors' commissions in the regular army; and with few exceptions the civilian generals proved incompetent to handle large armies. The conspicuous example to the contrary was General Nelson A. Miles, who worked up to a high position in the army. The intrusting of large commands to men of no previous military experience caused the loss of scores of thousands of lives and of hundreds of millions of treasure, and prolonged the war for many months.

(3) The third method of raising troops is by conscription or draft. Every man is bound to render military service when the country needs him, and it is legal to select by lot such part as may be needed. In 1863 a call was made for troops, apportioned among the states according to their population; in case a state failed to enlist its quota, a public drawing was held. Many states make up their quota by money bounties and other inducements; in others the drafts were held, and the result in New York City was the worst riot ever known in the history of the United States. Of the 200,000 men drafted at that time, large numbers proved to be physically incapable of service; others paid money compensations; and

others hired substitutes. In one lot of 15,000 men drafted, only 1,300 were actually enlisted.

War at its worst is the most awful of calamities. Till within about two centuries, invading armies habitually pillaged everything that they could lay their hands on, burned the cities, violated the women, tortured prisoners, murdered men, women, and children indiscriminately, and sometimes swept off the whole population into slavery. The growth of a spirit of humanity has brought about an agreement among civilized nations that the purpose of war is simply to destroy the enemy's military power; hence the wounded, the prisoners, and the non-combatants must be treated with humanity, and private property may be seized only if it can be made available for immediate military operations.

This milder spirit is reflected in our Articles of War: pillage, rape, torture, the wanton burning of houses and cities, the use of poisoned bullets, are all forbidden. Nevertheless, what is allowed is severe enough: an invading army may sweep the country bare of every house or tree that might shelter an enemy or give him sustenance; it may bombard an inhabited city; it may, if necessary, sweep up and concentrate the inhabitants of a district in order to prevent their giving aid and comfort to the enemy. During the Civil War the lower Shenandoah Valley was raided from end to end; standing crops and every mill in the valley were destroyed to prevent their making flour for the enemy. Above all, the commander of the army may declare martial law, which annuls the previously-existing government and makes his will the sole authority; he may then arrest any person within his lines and condemn him to death by court martial.

In the whole history of the world, no great war was ever carried on with such consideration for non-combatants as the Civil War. Rape was almost unknown; torture of prisoners was exceedingly rare, and probably never occurred under the authority of any general officer; there was a good deal of looting on both sides, but no scenes of rapine and despair

such as have usually occurred at the taking of a city. In the Indian wars and in the Philippine War, both carried on at great distances with crafty and savage enemies, there were occasional acts of cruelty to prisoners and non-combatants, none of which were authorized or approved by the head of the army.

Congress may make rules for captures by land and sea. This involves the right to seize the merchant vessels of an enemy on the high seas (about 25 captures of that kind were made in the Spanish War); it also involves the right to search neutral vessels, in order to discover whether they are carrying contraband of war or are otherwise aiding the enemy. During the Civil War 1,504 vessels were captured or destroyed while trying to enter or leave blockaded ports.

The present necessities of the American army and navy are two. (1) An organization and administrative system which shall be as efficient as the German or the Russian. This requires a trained general staff, with authority over all the special branches of military administration. (2) A recognition of the fact that the militia is costly and vexatious, and weakens the national power of offence and defence. We need really efficient and trained state troops for state purposes; we need more generous authority to enroll federal regiments; we need the selection of none but trained soldiers for responsible command of armies; we need field manœuvres by land and by sea; we need inflexible maintenance of a humane treatment of non-combatants, without forgetting that the object of war is to put an end to hostilities.

206. Military and Naval Pensions.

The cost of the army and navy of the United States has become startling: in 1801 it was $4,000,000; in 1814, a war year, $28,000,000; in 1865, $1,220,000,000; in 1901, a year of international peace, it was more than $200,000,000, or about two fifths of the whole national expenditure. To this sum should fairly be added the payments for military pensions, which down to 1861 were not more than a few millions a year,

but which since 1892 have never fallen below $130,000,000 a year. The Continental Congress promised that officers and men should be rewarded for their service, and the officers were voted a cash bonus amounting to full pay for five years; the common soldiers of that war and of the succeeding Indian wars, the War of 1812, and the Mexican War were all rewarded with grants of land.

Besides these grants for service, old soldiers who were actually disabled and unable to support themselves have from the beginning received small money pensions during the remainder of their lives. Of course the Revolutionary soldiers are all long since dead, and in 1901 there was only one survivor of the War of 1812; but four widows of Revolutionary soldiers still draw pensions.

When the Civil War broke out, a specific promise was made by Congress that men disabled by disease or wounds should be supported, and the localities in many cases pledged themselves that the families of men who fell should be cared for. These promises were fulfilled: an act of 1862 granted pensions of from $8 to $30 per month to men disabled in the service, and to their widows after their death. The rates of pensions were a little increased from time to time, and special allowances were granted to men who had severe disabilities. In 1879 an act was passed authorizing any person entitled to a pension to claim arrears from the date of his discharge; this offered a premium of about $1,000 for new claimants, and the payments immediately jumped up from $27,000,000 in 1878 to $57,000,000 in 1880.

So far pensions had been granted only to soldiers disabled in the service and their relatives. In 1886 a bill passed both houses, but was vetoed by President Cleveland, granting pensions of $6 to $12 per month to all persons who had served in the army for ninety days and were unable for any reason to earn a support by manual labor. This was the first time that the principle was acknowledged by Congress that every person who had served in the Civil War was entitled to

aid from the government if he needed it. Widows of old soldiers are entitled to pensions, no matter what the cause of death, provided they are without means of support other than their daily toil, and (since 1900) have an annual income less than $250. This bill became an act in 1890, cost $500,000,000 within ten years, and more than 550,000 persons are now drawing pensions under it. In 1901 there were on the rolls 736,000 disabled persons, and 234,000 widows of soldiers.

About 7,000 special pension acts have been passed since 1867, each of them granting a pension to some individual who could not bring the necessary proof before the Pension Bureau. Some of these cases were meritorious, the evidence having been destroyed; others were undeserving, — as, for instance, a bill granting a pension to the widow of a former soldier who was accidentally shot by a neighbor in the effort to shoot an owl; and cases have occurred of the grant of arrears of pension to the amount of $4,000 to the "widow" of a soldier who had married again after her husband's death. By acts passed from forty to sixty years after the end of the War of 1812 and of the Mexican War, all survivors of those wars were granted pensions; and it is probable that a few years hence efforts will be made to do the same thing with the survivors of the Civil War, eight tenths of whom appear to be already on the roll.

The difficulties with the whole pension system are (1) That enormous sums are involved: since 1866 $2,700,000,000 has been paid in military pensions, a sum nearly equal to the original cost of the war. (2) Pensions are freely granted to men who served but a few weeks, who never saw a battle, and who never suffered from wounds or disease. (3) Those who lived through the Civil War are aware that the soldiers were not the only persons who made sacrifices for the salvation of the government. The hardships and suffering were shared by the whole nation: wives, sisters, children, sweethearts, suffered privations and anxieties; one brother often supported the family so that another brother could go to the war.

It is right that the old soldier should be preserved from want, and that the wife of his youth should be cared for if he is taken away; it is not right that men able to care for themselves should be receiving the bounty of government. Some of the pension cases border on the ludicrous: as, for instance, that of a man who was receiving $100 a month for total disability, and also a salary of $5,000 a year as senator of the United States; and of a man who received a pension for total deafness, and was employed in one of the departments in Washington to attend the telephone.

In addition to money pensions, the old soldiers have many privileges. Many of them received heavy cash bounties when they went into the service; the United States has provided a number of Soldiers' Homes throughout the country, to which any man who has served is admitted if he so desires; some of the states and localities regularly appropriate money for the support of soldiers and their families; and soldiers have a preference over other persons in appointments to the civil service.

Part IX.

Commercial Functions.

CHAPTER XXVI.

ORGANIZATION OF COMMERCE.

207. References.

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208. The Business Man and the Firm.

Large as is the movement of foreign commerce, it is only a fraction of the business which begins and ends within the United States. The actual production in one year in the United States is now about $18,000,000,000; and parts of this enormous output are moved several times, before reaching the consumer. The annual savings of the American people, after paying more than $1,000,000,000 for the expenses of their governments, is perhaps $1,000,000,000, or $12 per head of the population. Of the body of elaborate law and practice on the rights and responsibilities of traders, only the relations of the various kinds of government to the organization of business can be touched upon here.

In colonial times, most business was done by merchants trading on their own credit: John Hancock and Robert Morris are examples of wealthy merchant princes, who bought and

sold, imported and exported, owned vessels, and did a forwarding and banking business for themselves and their friends. In 1900 about 1,100,000 persons were doing business as merchants and manufacturers, each for himself, each liable in his whole property for any debt.

A common variation from this type is the partnership, the conditions and relations of which are adjusted by state laws, and the general principle of which is that every active partner has a right to make contracts in the name of the concern and to sign for the firm, and is liable for the whole amount of the firm's debts. Partnerships have the individual's privilege of holding private the details of their business, although for their own protection and as a basis for collecting debts they keep books of account. Partnerships are easily perpetuated from generation to generation: the firm of Brown and Ives of Providence, for instance, has continued in profitable business for more than a century.

The system is favorable to many kinds of business which require special functions: one partner may be the financier, another the manager of the factory; another may superintend the extraction of raw material. All active and energetic firms are able to borrow money from banks created to provide such credit facilities. Thus, business houses control capital not their own; and the success of a business means not only an income and a gain for the partners, but an avenue for the investment of others' capital. The great disadvantage of a partnership is that every partner has the power to ruin both himself and the other members of the firm by injudicious agreements.

209. Corporations and Trusts.

Notwithstanding that the colonies were founded on charters granted to trading companies, commercial corporations were little known in America till after the Revolution. In 1781 was chartered the first bank, — the North America, in Philadelphia, — and about the same time began turnpike, canal,

insurance, and manufacturing companies. From that time the organization of business by corporations has gone forward with leaps and bounds.

Nothing is said in the federal constitution about chartering corporations, and a clause granting such a right to Congress was voted down by the Convention. Nevertheless, the Northwest Ordinance of 1787 was a charter for a public corporation; in 1791 the federal government chartered the Bank of the United States; and as soon as it had a seat of government it began to charter companies in the District of Columbia. By the practice of a century, backed up by numerous decisions of the Supreme Court, Congress has a right to charter corporations for any national purposes, with power to carry on operations throughout the Union. Most of the charters, however, are granted by the states. A special statute used to be necessary in each case; but at present many states have general laws of incorporation, under which, after fulfilling certain formalities, any body of persons has a right to be incorporated.

(1) The fundamental principle of incorporation is that the organization thus created is in most respects like an individual: it may hold property, receive bequests, especially for educational and charitable purposes; it may sue and be sued; it may contract debts and become security for other people's debts. (2) A second characteristic is the limited liability of the stockholder: in case of failure of the corporation, he loses only the amount which he has paid for stock, and a limited amount beyond; for instance, the holder of ten $100 shares may lose his $1,000 and be liable for another $1,000. This makes stock investments attractive to wealthy men, who would not risk their whole fortunes on the success of each of a dozen different partnerships, but who could not be held responsible for the failure of any of a dozen companies in which they were interested. (3) The corporation has the further advantage that its stock can be subdivided into small shares, thus furnishing investment for the poor man; and, since the shares

are readily transferable from hand to hand, stock is a much easier investment to manage and to dispose of than a partnership interest.

Corporations, like individuals, have distinct obligations under national and state statutes. (1) In some states considerable fees are payable on the creation of a corporation; in others there is a special corporation tax. (2) An important restriction is that corporations may be compelled to publish accounts for the protection of stockholders and for the information of investors: the United States Interstate Commerce Commission requires the submission, on uniform blanks, of accounts relating to interstate commerce. By an Act of February 14, 1903, the United States may call for the accounts of any corporation engaged in interstate business. (3) In many states corporations, such as gas and water companies, railroads, traction lines, and other public-service corporations, are subject to the inspection, and even to the control, of administrative commissions. (4) Still another hold of the state is through the power of the courts to take away the charter of a corporation if it can be shown to have violated the conditions upon which it was created.

The economic development since the Civil War has called into being literally thousands of corporations, and about 1870 began a process of amalgamation of those in the same line of business. Charters were often granted, especially to railroads, permitting one corporation to absorb another. This process led to many complications, because the ordinary rule is that a majority of shares decides questions in corporation meetings: for instance, in a corporation having 100,000 shares, the holder of 51,000 shares may transfer or impair the property against the will of the holders of the other 49,000.

To facilitate the combination of corporations, the method of trusts was invented, by which certain persons were designated as trustees to hold the stock of several corporations and to vote it all for one purpose. This was practical amalgamation without the actual process. At first these trusts were

merely private associations of individuals, who were not liable in their own property for the debts of the trust or of any of its corporations, and who therefore were enjoying the privileges of incorporation without its limitations and safeguards. At present nearly all such organizations have taken out separate corporate charters: corporation A may own all or a majority of the stock of corporation B, which may own the whole stock of corporations C and D, which may be made up of amalgamations of corporations E, F, G, and H. Such trusts are exceedingly hard to follow and control, especially as corporation A may be chartered by New York, corporations B and C by New Jersey and West Virginia, and the other corporations by still other states or by foreign countries. Of late years the name "trusts" has also been applied to powerful corporations which comply with the regular corporation laws but are formed to control the whole of some great line of business. Such are the Meat Trust, the Federal Steel Company, the Standard Oil Company, and the Cotton-seed Oil Trust.

The latest form of aggregation of capital is the syndicate, or combination. It has become a business, almost a profession, to promote a consolidation of large enterprises. For instance, all the sugar refineries of the country are owned by one body of capitalists, who run those that are most profitably situated. The great banking houses, especially in New York, are the agencies for great aggregations of capital, and their members are large owners. The United States Steel Company was capitalized at $1,100,000,000, and was financiered by the house of J. P. Morgan & Co. Through these agencies, understandings have been reached between the heavy capitalists, especially the owners of railroads: for instance, the great east and west trunk lines are in the hands of people who undertake to keep rates up to a paying figure, and who avoid competition with each other.

210. Banks and Banking.

Among the earliest joint-stock limited liability corporations are the banks, which in many ways are still the most effective agencies of modern business, and in their important functions are closely regulated by either federal or state law.

(1) They receive deposits in any amount, and thus bring into use the small savings and balances which would otherwise be hidden away. (2) They make loans, partly out of their capital, partly out of their deposits, partly out of their note issues.

(3) Through the system of payment by checks, the banks make it possible to carry on an enormous business with a small amount of currency. In all the cities there are clearing-houses, in which checks are exchanged and differences between the daily debt and credit adjusted. In the New York clearing-house, the annual clearings for 1902 were $75,000,000,000, of which less than 5 per cent had to be handled in cash. (4) The banks through their own checks make easy the transfer of money throughout the country at small expense.

(5) Many banks issue demand notes in small denominations: the so-called "colonial banks" were really loans of public money expressed in paper notes. The first actual banks of issue were founded during the Confederation; eventually the states authorized some thousands of banking institutions, the security of which depended on the care with which the charters were drawn up, — that is, on the temper of the state legislatures. During the period from 1810 to 1860 hundreds of "wildcat" banks freely issued notes: in 1861 it was estimated that there were about 5,000 kinds of bank notes afloat, many of them counterfeit or raised, others authentic, but without value because the bank had no property. The confusion was vexatious, and would now be intolerable: every time a payment was made the questions arose, "Are those bills genuine? are they on sound banks? are they redeemed in specie at the Eastern centres?"

In 1791 the federal government chartered the first of three successive systems of national banks. The question of constitutionality was at once raised, and Hamilton argued that Congress had a right to charter a bank; not through any power to charter corporations in general, but because, in carrying out the powers committed to it, Congress had the implied power of using any suitable instrumentality not distinctly prohibited by the constitution. What he really had in mind was that the United States Bank would be a means of convincing the country that the federal government ought to continue. During its lifetime of twenty years the bank was prosperous and helpful.

Allowed to expire in 1811, the United States Bank was revived in 1816, with what was then the enormous capital of $35,000,000. In 1829 it incurred the hostility of President Jackson, who saw with clearness that it could not permanently keep out of politics; he refused to sign a recharter bill, and the bank expired in 1836. Once more the state banks had a clear field. About half the states created good sound systems of banking; others set up official state banks, such as those of Kentucky, Ohio, and Indiana, some of which were successful; and others failed and brought ruin with their failure. In 1814, 1837, 1857, and 1861 all the state banks suspended specie payments.

During the Civil War, Mr. Chase, secretary of the treasury, devised a system of national banks, which was authorized in 1862. In 1865 Congress laid a tax of 10 per cent per annum on all state bank notes; and thus the banks of issue were compelled to take government charters or to give up their circulation. Of course private firms and state corporations may, and many do, receive deposits, lend money, and make exchanges; but no bank notes can profitably be issued except by the United States national banks.

These national banks have increased enormously in number and power. In 1902 there were over 4,300 of them, with a total capital and surplus of over $970,000,000, and

a note circulation of $360,000,000. As government institutions, the banks are subject to the supervision of bank examiners appointed by the federal government; and their notes are absolutely protected by deposits of United States bonds kept in the federal treasury. The banks are practically associated in districts; the small country banks keep deposits in the larger cities, while the city banks keep deposits in New York. In practice this is something very like the English, French, and German systems of parent banks with branches.

Two other sorts of banks must be mentioned. One is the savings bank, which receives deposits on interest, and safely invests in real estate and other long-time securities because in case of pressure it is allowed to require notice before paying out deposits. In 1901 the savings banks of New York State alone had over 2,000,000 depositors, and $1,000,000,000 on deposit; and in the whole country there were about 6,500,000 depositors with deposits of $2,600,000,000.

The other kind of bank is the trust company, which has developed within the last twenty years. Such companies undertake the administration of large transactions, such as the refunding of a corporate loan or the amalgamation of corporations; they act as trustees and investors for estates; and most of them receive deposits, subject to check, although none of them have any privileges of note issue.

211. Transfer of Title to Property.

One important element of modern commerce is celerity and security (chiefly under state law) in giving legal control of property that has been sold, and in creating titles which may easily pass from hand to hand. For instance, the ownership of a railroad is represented by shares, which are transferable upon the books of the company; and, if it is a sound, dividend-paying company, the owners can find ready purchasers, or can borrow on the security of their shares.

Title to the great staples of commerce is transferred in a

similar way. The farmer expects to get cash for his cotton or corn or wheat when he delivers it to the elevator; but the elevator company may ship the wheat on its way to Europe, and issue an inspection certificate, upon which money may be instantly raised, up to the full market value in Europe less the freight: the certificate is the title; and, though the grain may be in an inaccessible car somewhere on a side-track, the ownership is transferred whenever the certificate changes hands.

One means of simplifying transfers, both of stocks and bonds and of staple articles, is by the exchanges which exist in all the large cities. In New York City, for instance, there is a stock exchange, in which for a few hours every business day transactions are made by "brokers," who take orders to do business for other people upon commission. There is also a separate cotton exchange, a copper exchange, a petroleum exchange, and a produce exchange, in which wheat, corn, oats, rye, and other such staples are bought and sold. The actual thing transferred is either a certificate to visible property or an agreement to transfer property.

All these exchanges give opportunity for buying and selling for future delivery: a manufacturer often has to contract beforehand for a supply of his raw material; and exporters buy in advance, so as to fill their steamers. In practice most future sales are speculations, not based upon anything tangible. A agrees to deliver to B a million bushels of wheat on January 1, at a price which A thinks is higher than wheat will bring on that date; he and his friends then as "bears" try to force down the price by offering low prices for small lots, and by trying to persuade people that the crop will be heavy; B and his friends as "bulls" try to push the price up, so as to make a profit on the purchase when delivered. All the staples, and many stocks and bonds, are subject to these speculative operations, which are very close to gambling and in Germany are strictly limited by law and heavily taxed. In most cases, when the transaction comes to be settled, no property is

delivered at all: the party that gets the worst of it simply pays the difference between the agreed price and the then market price.

To go into these speculations, it is only necessary to deposit a margin, — that is, money enough to cover the probable fluctuation of prices. With $1,000 a man may purchase the right to buy and sell $20,000 worth of stock. If the movement goes against him to the extent of 5 per cent, or "five points," his broker will "sell him out," unless more margin is deposited; if the object of speculation rises sharply, the speculator may sell out and get the profit, not on his $1,000, but on the nominal $20,000. This is gambling for high stakes; and the "lamb," or outsider, is almost certain to lose in the long run, because he pays the broker's commission, which is a steady drain, and because the great manipulators of stocks and products have better opportunities than any one outside of knowing whether prices are likely to fall or to rise, and they do not intend to lose their money to the greenhorn.

These speculative transactions seldom much affect the actual cash value of property, although railroad or corporation stock is sometimes deliberately depressed in price by unfavorable reports from large owners, who wish to frighten holders out of their stock so that they themselves may pick it up at a sacrifice; or a great staple or stock is "cornered" by people who agree to purchase at a moderate figure, and then lock up the available supply and make delivery impossible.

In investments, a distinction is always made between stocks and bonds, and also between various kinds of stocks and bonds. Usually a corporation has a simple capital stock; but it is not uncommon for it to have also a preferred stock, which gets the first profits. The best bonded security is usually a first mortgage bond on the real estate of a corporation, especially of a railroad, which must pay interest on the mortgage or lose control of its right of way. A second mortgage is often put on, and such a "junior security" usually draws a higher rate of interest, because not so well protected.

A special form of property is placed under the exclusive jurisdiction of Congress, by the clause of the constitution giving to Congress authority "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." Early statutes embody three principles which are the basis of the present great patent system: (1) the fee is small (now $35); (2) all patents are recorded in the books of the Patent Office for comparison and for transfer of title; (3) all patents cease after a brief term of years (now 14). The patent gives the exclusive right to manufacture, use, or sell the invention described; and the result is that, in the modern intense industrial competition, thousands of patents are obtained in order that they may not be used: for instance, when Hiram Maxim invented his magazine gun, he took out about 200 patents on every conceivable variation, so that nobody else could come in with something near his machine. The telegraph companies and like corporations habitually buy up all the promising patents offered to them, using those which seem likely to save them money, and pigeon-holing the rest.

The number of patents granted since the records began in 1837 is over 700,000, of which 28,000 were in the year 1900. In the same year, however, 21,000 patents expired. Thomas A. Edison stands on the books of the Patent Office as the inventor of 742 allowed patents, and many other inventors have received more than 100 patents each. Two of the earliest important patents were to Eli Whitney for his cotton-gin in 1793, and Robert Fulton for his steamboat in 1809. The inventive genius of America has been stimulated by some cases of enormous profits: thus, the principal sewing-machine patents brought in over $60,000,000 profits to the holders. The technical skill necessary to distinguish between a new and a previously-patented idea is such that patent litigation is frequent and is hotly contested.

The exclusive right to a copyright on an intellectual product

is subject to the same principles as a patent, — a small fee (50 cents), record on the government books; and a term of years (now 28, with the privilege of renewal for 14 more). Copyrights include books, maps, dramatic or musical compositions, drawings or other works of art, engravings, photographs, and so on. These privileges were for many years confined to citizens of the United States; but in 1891 an act was passed allowing foreigners to secure copyrights on literary productions published from type set within the United States.

For several years Congress also gave exclusive privileges of trade-marks, with the purpose of preventing the imitation of standard brands of goods; but a test case was made up in 1881, and it was held that trade-marks for commerce within a state were nowhere authorized by the constitution. Congress subsequently passed an act providing for the registry of trade-marks, to be used in commerce with foreign nations, or with the Indian tribes; and about 1,600 such trade-marks are recorded every year.

212. Doctrine of Contracts.

All modern business rests upon the principle that sane people who make agreements with each other, not influenced by fraud, must keep those promises even to their own hurt, and are liable in civil suit for the fulfilment of the agreement, or for damages. This great doctrine of contract, firmly imbedded in the common law, is absolutely essential to civilization and to the maintenance of private property. Governments should recognize this fact, both by keeping their own promises and by holding private contracts to fulfilment.

Neither of these two principles was very carefully observed in colonial times. The colonies issued quantities of paper notes, a part of which they never paid; and they thus made it possible for the debtor who had borrowed money or bought goods on a specie basis to settle in a depreciated currency. These evils were greatly aggravated in the Revolution. The federal government issued $240,000,000 of paper money, the

great part of which was never redeemed. The states also issued Revolutionary paper notes, which were all substantially repudiated; and in the Confederation epoch about half of them raised new crops of the same kind. They also passed a series of statutes known as the "stay and tender laws," under which creditors were compelled either to postpone suits for the collection of debts, or to accept cattle, produce, or even land at an appraised value. This affected creditors from other states, and was the cause of loss and confusion. Hence, by the federal constitution Congress was given power to regulate commerce between the several states; and the states were forbidden to emit bills of credit, to make anything but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts.

In practice, the restriction on the states was speedily enlarged to cover cases which probably were not in the minds of the framers of the constitution. In the case of the Yazoo lands (*Fletcher* v. *Peck*, 1810), the Supreme Court held that a Georgia statute annulling a grant of lands was void because the grant was a contract creating vested rights, which the state was obliged to recognize. In 1819 this doctrine was widely extended by the decision in *Dartmouth College* v. *Woodward*. The king in 1769 had granted a charter to Dartmouth College; and in 1816 the legislature of New Hampshire passed an act to alter the charter; the Supreme Court held that a charter to a private institution, once granted, was a contract irrevocable without the consent of the corporation thus created. In the same year, in the case of *Sturgis* v. *Crowninshield*, it was held that a state bankruptcy act applying to debts incurred before the date of the act was also an impairment of contract. After about 1830 the Supreme Court took milder ground as to contracts; and most of the states have settled the question of charters by inserting clauses in their constitutions, or in the text of the charters, to the effect that charters are alterable or repealable at the discretion of the legislatures. The Fourteenth Amendment in 1868 added another restriction, —

namely, that no state should "deprive any person of life, liberty, or property, without due process of law," a clause which reinforces the earlier inhibition on impairment of contracts.

No clause in the federal constitution prohibits Congress from impairing the obligation of contracts if such an impairment comes as an incident of specific powers. Under this construction, in 1862 Congress made United States treasury notes legal tenders, and eventually issued $450,000,000 of such notes, an issue which the Supreme Court in 1884 held to be constitutional even in time of peace. The Irish land legislation during the last twenty-five years in the British Parliament has practically been a steady impairment of the rights of contract between landlord and tenant. Such legislation could hardly be secured in any state in the Union.

The one direction in which the nation and the state steadily interfere with contracts is in declaring that certain kinds shall not be made at all. In Rhode Island, for a time, a traction company could not make or enforce a contract with men to work more than ten hours a day; and in no state can a man legally contract to perform a criminal act, or to serve another as a bondman. At present, legislation is moving rapidly toward a regulation of the relations between employer and laborer, by forbidding men to make agreements as to hours or dangerous employments which are thought to be prejudicial to the interests of the whole working class.

How a contract may be made, what is legal evidence of it, how far specific performance may be compelled, how damages for breach of contract are to be assessed, — these are legal questions of great intricacy, the subject of very numerous laws, national and state, and of thousands of court decisions.

213. Weights and Measures.

In most cases, contracts are expressed in quantities, — so many dollars for so many acres of land, tons of iron, barrels of molasses, or yards of cloth. One of the great services of the

French Revolution was to simplify the whole system of weights and measures, by the introduction of the metric system. The unit of length, supposed to be one four-millionth of the circumference of the earth, is the metre; and area, mass, and weight are directly related to it; hence every child who can cipher knows all his tables of measure automatically. This great reform has extended everywhere throughout the Western world, except to England and the United States, which still adhere to the clumsy and antiquated measures of a century ago: we have two kinds of pound, pound troy and pound avoirdupois; two tons, the long ton of 2,240 pounds and the short ton of 2,000 pounds; our square measure of land involves clumsy fractions; only our coinage is decimal, to the great convenience of the country. The constitution gave to Congress exclusive control over weights and measures, and it simply legalized the old-fashioned English standards.

The local governments usually regulate scales and measures, and often have inspectors who search for false or inaccurate weights and measures. In 1821 John Quincy Adams was very anxious to unify the standards, and two years later Congress ordered a set of standard weights to be sent to each state. In 1866 Congress authorized the use of the metric system; and it is freely employed by scientific men for their work, because it is used by scientific men abroad. It would be a public convenience to pass a national statute for the gradual substitution of this system, by setting a date after which the courts shall not recognize contracts expressed in the old standards.

214. Coinage and Currency.

Since most contracts, and all obligations of the tax-payer and of the local, state, and national governments are expressed in money, it becomes very important to know what is the authority of government over coinage and currency. The only legal English coinage at the time of colonization was specie, and the unit was the pound sterling, divided into

twenty shillings, and each shilling into twelve pence. The colonies had a large trade with the Spanish colonies, from which foreign silver and gold coins flowed in, especially the piece of eight or dollar; but in many places there was so little money that people dealt with each other by barter. Paper notes, first issued by Massachusetts in 1690, were so frequent in the colonies that in 1751 the British government prohibited further issue, yet could not stamp them out.

During the Revolution, specie nearly disappeared; but favorable trade conditions after the war brought in a jumble of foreign coins, good, bad, and indifferent. The Confederation had power to establish a national coinage, and agreed on a decimal system founded on the dollar; but it had no specie with which to strike coins other than a few tons of cents. By the constitution, Congress received power to "coin money, regulate the value thereof, and of foreign coin," and the states were expressly forbidden to "coin money" or "emit bills of credit."

It seems to have been supposed that under this clause the states were prohibited from striking money, and both states and nation from issuing paper money as legal tender; so that the only legal currency would be federal coins, or foreign coins allowed to circulate at valuations fixed by Congress. In 1792 was passed the first coinage act, providing for the striking of both gold and silver coins at a ratio of 15 to 1: eagles, half eagles, and quarter eagles were of gold; dollars, half dollars, quarter dollars, dimes, and half dimes, of silver; cents and half cents, of copper. At that time, however, there was no considerable supply of either metal produced in the United States, and the notes of the state banks and the United States Bank were the common currency, although not legal tender. In 1834 the ratio between gold and silver was changed to 16 to 1. The discovery of gold in California in 1848 greatly increased the gold coinage; but when specie payments were suspended in 1861 gold and silver at once went out of circulation

To fill the gap, and to provide an easy means of borrowing money, the government issued treasury notes, not legal tender, as it had done repeatedly in times of financial stress. In 1862 legal tender notes were authorized; and, as the treasury was hard beset during the whole war, more and more notes were issued, up to about $450,000,000, with a corresponding depreciation as measured in specie. The lowest point reached was in 1864, when greenbacks for a few weeks were worth about 40 per cent of their face. It was not until 1879 that the government could accumulate $100,000,000 of gold as a reserve for $350,000,000 of greenbacks then outstanding, and resume specie payments.

Meantime a new currency question arose. Silver had in 1873 gone almost out of use, and Congress, practically without opposition, voted to discontinue the coinage of the standard silver dollar. About this time new silver mines were opened up, and Germany gave up its silver coinage and threw its surplus stock on the market; so that the market price of silver in the English market fell rapidly, as measured in gold coin. The result was that the mine owners felt that a use of silver which had gone on for nearly a hundred years had been unreasonably withdrawn; and a considerable part of the people, especially in the West, felt that the conditions of commerce and the influence of the government were such as to compel those who were in debt to pay in gold, which many eminent authorities believed was constantly rising in proportion to the staple products of the country.

In 1878, therefore, Congress enacted that the secretary of the treasury every month buy silver bullion to the amount of not less than $2,000,000 measured in gold, and coin it into silver dollars. In twelve years 368,000,000 silver dollars were coined; but the price of silver began to drop: it was impossible to keep this enormous weight of silver in circulation, and the government adopted the policy of issuing certificates in dollars and multiples of dollars, each representing actual coins lying in the vaults of the treasury.

In 1890 the so-called "Sherman Act" was passed, by which the secretary of the treasury was compelled to buy 4,500,000 ounces of silver each month, and to use it as a basis for legal tender notes payable in coin. This act lasted only three years: in 1893 a dangerous financial panic came on, and silver coinage was wholly suspended by Congress. The gold reserve to support the greenbacks, which had for fourteen years never fallen below $100,000,000, was in danger of disappearing; the revenue of the country fell off; and over $260,000,000 of government bonds were issued to meet the deficiency. In 1896, and again in 1900, the question of the restoration of silver to coinage on the old basis was the burning issue in the presidential campaign. Good crops, however, favorable trade balances, and an enormous and unexpected production of gold brought matters to a point where, on March 14, 1900, Congress authorized the secretary of the treasury to redeem greenbacks, silver treasury notes, and silver notes of 1890 in gold coin, and to sell bonds to keep up a sufficient reserve.

This action quieted the financial interests, which feared that the United States was to be thrown upon a standard different from that of foreign countries and subject to violent fluctuation. Losing the support of federal purchases, the weight of silver in a dollar fell from a gold value of 80 cents in 1890 to 38 cents in 1902. The history of the state bank notes, of the United States legal tender, and of the silver coinage, shows how dangerous to steady commerce is any change in the standard value, especially changes which are brought about for political and party reasons.

215. Regulation of Commerce and Occupation.

In supervision of ordinary trade and business, the United States participates indirectly through its tax system and its regulation of commerce. Congress requires in its laws, for instance, that liquor-dealers post up their licenses in public

view; that paper stamps be affixed to cigar boxes; that railroads make proper returns to the Interstate Commerce Commission.

The states directly and indirectly legislate on the conditions of business: for instance, the state tax laws frequently involve investigations into the receipts and profits of individuals and corporations. The states pass statutes specifically prohibiting or limiting occupations: for example, life-insurance concerns must keep deposits in the state treasuries to protect policy-holders, and are subject to official investigation of reserves, forms of investment, surrender values, and surplus. The banking business is very strictly regulated: savings banks, for instance, are forbidden to invest except in securities of permanent value, such as real-estate mortgages, state and municipal bonds, and the stock of other banks. Manufactories are regulated by enactments against undue noise or a smoke nuisance; by laws requiring powder-mills and other similar dangerous manufactories to establish themselves at a distance from other concerns; and by the inspection of food products. Hunting is regulated by the establishing of close seasons for fish and game. Agriculture is regulated by provisions as to the mortgage of standing crops; the farmers are also aided by Congress by the distribution of seeds, by the collection and publication of crop statistics, by the maintenance of the agricultural experiment station, by bounties for the manufacture of sugar, for a time offered under an act of 1890. Mining is regulated chiefly by the states: an example is the law forbidding the use of naked lights in gaseous coal mines.

Certain pursuits are forbidden by state laws. The lottery business is prohibited in every state; but there is a vast amount of "playing policy" (a form of public gambling which consists in betting that certain numbers will be drawn) through concerns absolutely prohibited by law, which select their numbers after the bets are in, which with honest management have odds of about five to one in their favor, and which cannot be depended upon to pay the winnings. Gambling houses are absolutely forbidden by law in every state, but they go on

openly or secretly in every large city. In most states the possession of lottery tickets, policy slips, or gambling implements, or the being present at a gambling place, is a punishable offence.

Many states also regulate professions, — as by prohibiting persons from the practice of medicine unless they have passed the examination of a state board, and lawyers from representing clients before a court unless they have been duly admitted to the bar. In some states, druggists and drug clerks have to be licensed; in others, plumbers and miners have to be examined and licensed. Exclusion of unqualified persons from such occupations is not considered a violation of the rights of the individual, but a protection of the rights of the community at large.

216. Regulation of Labor.

The relation between the employer and the employee is one of the most frequent objects of legislation; and laws, usually in behalf of the laborer, appear on the statute-books of all states. The most common statute is for the protection of the life and limb of the laborer, by requiring the employer to use safety appliances and fire-escapes. In many states, the employer is held liable for damage to life or limb caused by the neglect of such precautions; and this is the only effective means of securing obedience to the laws.

Another form of labor legislation is directed against the employment of women and children. In 1890, of the children from ten to fourteen years of age, 600,000, or about one twelfth, were at work. In the Southern states, particularly in Alabama, child labor of the most wearisome kind is legal, and children as young as six years old are sometimes sent into the cotton-mills. In most of the Northern states, no child can be sent to work at all unless he has had several years of schooling.

The hours of labor are the subject of many statutes. In 1892 Congress enacted that eight hours should constitute a day's labor in the government service. In the states a ten-hour law is not uncommon; in several of them eight hours constitute a day's labor unless otherwise agreed; in some there

is a ten-hour law for children. The labor unions have for years set themselves toward the goal of a universal compulsory eight-hour law; but such a requirement must necessarily except domestic servants and farm hands. Many of the states have established public holidays, on which factories and all places of business are closed.

Another regulation of labor is the very common prohibition of the sale, in open market, of goods produced by convicts. This legislation tends to condemn to complete or partial idleness prisoners who are able and anxious to work hard enough for their own maintenance. Other legislation has in several states established arbitration boards for the settlement of disputes between employers and employees; in a few cases such a board has a right to investigate and report without the consent of both parties.

By indirection the states have also taken ground on strikes. Under the English common law, a combination of laborers to raise wages was in itself unlawful; hence neither strikes nor trade unions could legally exist. Everywhere in the United States, laborers may associate peacefully for their common interests, and may cease work when they feel so disposed, either singly or in groups. Technically, a contract to work for a week or a month is as binding on the laborer as on the employer; but, in case of breach of contract, the remedy for either is to demand, not specific performance, but damages. Thus, if the mill shuts down in the middle of the week, the man who has a contract for a week's work may sue for the remaining wages; but the workman cannot compel the employer to start up his mill, nor can the employer compel the workman to do his work, for that would be practical slavery. Since the employer usually has something from which a judgment may be collected, and the laborer has little property, the likelihood of getting a collectible judgment is much greater for the workman than for the master.

The tendency of the American court is to tone down labor laws by holding the broader ones unconstitutional; and, upon

the whole, the machinery of government and the make-up of society are more favorable to employer than to employee. On the other hand, the tendency is very strong toward permanent acts restricting the hours of labor, protecting against accident, and relieving childhood from the terrible burden of stunting and stupefying labor. The doctrine that a man once employed has a property right in his place, such that, if he joins a strike and ceases work, he has the quasi-legal right to prevent another man from taking his place is not yet supported by any statute or official decision.

217. State and Municipal Industries.

The usual attitude of the government toward industries is to protect the individual in his chosen pursuit unless it is destructive of the morals of the community: government assures to the laborer that he shall not be molested in earning his wages; to the property owner that he shall have peaceable possession of his property; to the business man and the farmer that the sale and distribution of their products shall be undisturbed. The modern tendency is to go farther still: first and last, the national, state, and municipal governments exercise a considerable number of industries on public account.

The national government is the largest publisher in the world, expending every year over $4,000,000 for printing and issuing documents and books. It is a manufacturer, as in the government arsenals and navy-yards, where ships and materials of war are made. The post-office is so nearly self-supporting that it may fairly be considered a vast business for forwarding intelligence; and it is much better conducted than the private express companies. It is not impossible that the federal government will also become the proprietor of telegraphs and telephones, and even of the railroads of the country. The United States manufactures at its own expense bank bills for all the national banks. During the Spanish War it organized transport steamers, which were virtually a large freight and passenger line.

Some of the states are engaging in public forests as a state industry. Most of them keep up some kind of manufacturing in their prisons and workhouses; when prohibited by law from making standard goods, they often make furniture and other supplies for state institutions. The Southern states go into the business of leasing out convicts to private firms, to be used in railroad construction and like hard labor.

In the municipalities we find the greatest number of public industries. No American city goes to the extent of the French, with public pawnshops and public restaurants, or imitates the English system of public tenement-houses; but a large number of American cities engage in the business of supplying water and gas or electricity to private consumers, and there is now a manifest tendency toward the business of public street-cars. Wherever the town system prevails, there is a town hall, which is often let for private entertainments. The city of New York manages a large system of public docks for profit, and the city of Boston has a public printing establishment.

An interesting case of state industry is the public monopoly of the liquor business in South Carolina. A system of "dispensaries" or public salesrooms is provided in which pure liquor is sold only in certain quantities and not to be consumed on the premises, the profits to go into the state treasury. The stock is purchased on state account. A somewhat similar system is that of state agents in prohibition states, who are designated to sell liquor for medicinal purposes.

Most of the national, state, and municipal industries are extravagantly managed, perhaps because they aim, not to make money, but to furnish a convenience to the communities. The right to expend public money somehow unbalances some honest men, and leads them to a reckless and imprudent course which they would not adopt in their private business. Nevertheless, some of the most important municipal works, notably the Boston subway and the New York tunnels, have been managed prudently and to the public advantage.

CHAPTER XXVII.

TRANSPORTATION.

218. References.

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219. State and Interstate Commerce.

With regard to private business, the American principle is, not to foster it, but to protect it against fraud and violence by statutes general in their terms. An opposite principle applies to transportation of freight and passengers, which so affects the conditions of all business and all private travel that it is carefully regulated by both state and national governments. The power of regulation is divided: movements of persons and commodities wholly within the boundaries of a state are normally subject only to the control of that state; movement from state to state, or from the United States to foreign countries, is subject to the federal government. Wagon transit, trolley lines, local railroads, the distribution of commodities into suburbs, are subject to state and local regulations. The movement of persons is ordinarily not restrained, except in the case of paupers and of people suffering from contagious diseases. In practice, fugitives flying to escape a pestilence have often been turned back by armed mobs.

The United States has also, through its tax system, some control over commerce wholly within a state: shipments of liquor, for instance, are all subject to the investigation of the internal-revenue officers. Congress may authorize the bridging of a navigable river, though both banks are within the same state; the federal courts, through their admiralty jurisdiction, may regulate navigation within a state; and the United States may follow and deport an emigrant who has unlawfully come into the country. The system of through railroad transit is such that acts of the United States for

regulating interstate commerce often virtually affect commerce within a state.

The border line between state and interstate commerce is always difficult to draw. Navigation from one port in a state to another port in the same state is local; yet in the great case of *Gibbons* v. *Ogden* (1824) the Supreme Court held that no state can grant exclusive rights of navigation in waters wholly within its limits, if they so connect with other waters as to be a part of an avenue of interstate and foreign commerce. The states have repeatedly attempted to limit railroad transit by taxation: in 1872 a Pennsylvania act imposing a tax on freights from Pennsylvania to other states was held invalid. Taxes on commercial travellers have been laid, but have always been invalidated on the ground that the states cannot indirectly tax or regulate even the soliciting of business from state to state. Attempts at state regulation by inspection acts on meats and other products brought into the state have been prevented by repeated decisions of the Supreme Court.

An occasion of serious controversy is the carrying of liquor into states which prohibit its manufacture and sale. In the test case of *Leisy* v. *Hardin* (1890, commonly called "the original package decision"), the Supreme Court held that no state could prevent the sale and delivery of liquors in the original packages in which they had been shipped from another state. To meet this difficulty, Congress on August 8, 1890, passed the Original Package Act, which provided that liquors imported into any state were subject to the operation and effect of the laws of that state.

During a century, Congress made few specific regulations of commerce except those concerning navigation, especially by steam vessels; but in 1887 the Interstate Commerce Act, in addition to the creation of a commission for the regulation of railroads, elaborately legislated against unreasonable charges, discriminations, or preferences, against pooling and excessive short-haul rates. This statute has repeatedly been amended

and strengthened. In March, 1893, Congress passed an act that, after January 1, 1898 (later extended to January 1, 1900), no car used in interstate traffic should be moved unless equipped with automatic car-couplers, which could be uncoupled without the men going between the cars. The result was that the number of coupling accidents diminished from over 8,000 in 1890 to about 5,500 in 1901, with a much larger train movement.

220. Transmission of Intelligence.

Control of the means of conveying intelligence has from remotest times been considered a proper function of government. A post-office system was introduced into the colonies, and Benjamin Franklin was the first postmaster-general. Under the Confederation this became a national institution, and by the federal constitution Congress was granted the extensive power to "establish post offices and post roads." For half a century the post-roads were bad; much of the mail was carried by horsemen, and the postage was high.

In the thirties and forties came about a great reform, based upon the discovery that low postage brought a greater return to the government. Postage was reduced in the United States in 1863 to three cents, and in 1883 to two cents, with the expected enormous increase of correspondence. International postage has also been reduced, till among the Western nations and many other parts of the world, united in a postal system, it is but five cents a half-ounce on sealed letters.

In the United States the post-office is a strict government monopoly: no private individual may step in and take the cream of the business by establishing a private post between or within large cities. The head of the postal service is the postmaster-general, who has under him four assistant postmaster-generals, an army of clerks in Washington, 9,700 railway mail clerks throughout the Union, 76,000 postmasters and 21,000 clerks, 18,000 letter-carriers, and 12,000 rural mail-carriers, besides other helpers. More people are con-

nected with the United States post-office than with the United States army and navy. The mail is carried by all sorts of public conveyances, — steamers, railroads, stages, trolley lines, buggies, horsemen, and men on foot. The railway mail service is the principal item of expense; for the mails are sorted while the trains are in motion so as to hasten the delivery.

The main principles of postal business are: (1) The equal right of all persons to use the mail, subject to the very important restriction that immoral, abusive, and obscene matter is excluded from it. In 1872, lottery, gift, and other fraudulent enterprises were forbidden the use of the mail; and letters addressed to banks and express companies, but presumably intended for lottery companies, are also undeliverable. Many thousands of letters are seized annually under this law.

(2) The second principle is that of the secrecy of the mails: it is a criminal offence for a postmaster or any other individual to open a letter addressed to another person, unless it is seized by regular process of law.

(3) The next principle is that the postage shall be low: sealed letters are sent from end to end of the country for two cents, postal cards for one cent; and this includes delivery by carrier in all towns of 10,000 population and upwards, and in many rural districts by a new system of rural carriers. The postage on the circulation of newspapers is very low, — one cent a pound on their weight; this so-called "second-class matter" has been twisted to include advertising and occasional publications having no subscription lists and hence no real right to be classed as newspapers.

The government carries single newspapers, books, photographs, and other matter at rates decidedly higher than are asked for the same service in most foreign countries. Owing to the great loss on second-class mail matter (the government pays on it about $29,000,000 a year, and receives about $4,000,000), and to the great amount of business performed for the federal government, the post-office receipts are always less than the expenditures. The number of post-offices in 1902

was 76,000, the revenue $122,000,000, the expenditures $125,000,000; and 8,000,000,000 pieces of mail matter were forwarded.

The post-office performs several special services: for a fee of eight cents it registers a letter and insures it to the value of $25; for ten cents it sends a letter by special messenger to any point within a mile of the receiving post-office; for small fees of from 1 per cent to $\frac{1}{3}$ per cent it furnishes money orders. As yet the government has not assumed the monopoly of carrying small packages, which is a serviceable function of several foreign post-offices.

In nearly all European countries the telegraph is also a government monopoly, partly because the diffusion of public intelligence is a public service, and partly because it can be much more cheaply carried on in connection with the post-offices. The United States was the home of the invention of the telegraph, — the first message ever sent over a wire was received in Washington in 1844; but the business was organized at haphazard by local companies, which were gradually concentrated until the sixties, when most of them were united in the Western Union Telegraph Company, which now has offices in every considerable place in the Union. Competing companies have repeatedly been formed, but the Postal Telegraph Company is the only one that has not been absorbed. The Western Union Company in 1902 had 196,000 miles of lines, and reported 69,000,000 messages, receipts of $28,000,000, and a profit of $7,000,000. The rates are rather higher for the same service than in foreign countries: in England a twenty-word message costs a shilling, while a ten-word message from New York to Chicago costs forty cents. It has often been suggested by postal authorities that the government ought to absorb the telegraph lines and work them in connection with the post-office; but as yet no progress has been made in that direction.

A newer means of transmitting intelligence is the telephone, which was invented as a practical talking-machine about 1876,

and has now extended over the Union. The business is in many places controlled by one company, the American Bell Telephone Company, which has about 2,000,000 instruments in operation. The company has no legal monopoly; but it controls valuable patents, and it is difficult for competitors to work in, since everybody wants to be connected with the exchange used by everybody else. This service might well be made a government monopoly, to be worked in connection with the post-office and telegraph. Since the operation of each exchange is local, the telephone service is subject to state restrictions, with the result that the same kind of service that in one state costs $12 a year, two miles across the line in another state may cost $30.

221. History of Modes of Transportation.

Local, state, and national governments have always concerned themselves with the avenues of communication. The earliest regular ways found in America were the buffalo paths, which intersected all the country inhabited by those animals. Almost of equal antiquity were the Indian trails, footpaths worn by immemorial use along the divides and across the carries or portages, from the head of one stream to that of another, — as at Fort Wayne (Indiana), Portage (Wisconsin), and Portage (Ohio). With the white man came the pack-horse, and the early frontier paths were used only by foot-travellers and beasts of burden.

The construction of wagon roads began in colonial times, but was a task of centuries: for primeval trees had to be cut, and ways made round or over the stumps; swamps were avoided by detours, or crossed by "corduroy roads" (trunks of trees laid side by side); bridges were few, and the fords on many streams were impassable when the waters were up. In New England the earliest roads ran along the hilltops, because it was easier to clear farms up there, and few bridges were needed. Down to 1789 there was probably not a road in the United States that was good after heavy rains.

Soon after the Revolution began the era of pikes, — that is, roads covered with broken stones, which under pressure consolidate into a waterproof surface. Many streams were spanned by permanent stone bridges, and Americans developed a special art of building wooden bridges of considerable span. Many highways were raised, drained, and graded. From 1790 to about 1840 hundreds of miles of such roads were constructed by private turnpike companies, which received the right to collect toll. The era of steam navigation on lake and river began in 1807 with the success of Fulton's craft, and is still a favorite means of freight carriage on river, lake, and sea. Canal construction is as old as Assyria; but the Dutch canals, with locks to raise boats from one level to another, came into England only about 1760. A few short lines were constructed in America between 1780 and 1800; but Madison's veto of the Bonus Bill in 1817 for the time prevented the federal government from aiding in this construction. The task was too great for private capital, and the state of New York at once began to construct the Erie Canal, and finished it from tide-water to Lake Erie in 1825. The example was followed by most of the states west and south of New York.

About 1830 a new mode of transportation was introduced, the railroad. The first line of parallel rails used for transportation in the United States was from a quarry near Philadelphia three quarters of a mile to tide-water, in 1810. The first line to use steam locomotives successfully was the Baltimore and Ohio, of which a short section was constructed in 1830. Within ten years railroads began to take away the passenger travel of the slower canals; by 1853 there were connecting railroads extending all the way from New York to Chicago; by 1860 one railroad line, the Hannibal and St. Joseph, crossed from the Mississippi to the Missouri River; by 1869 there was through rail connection from ocean to ocean. Half a dozen states built or subsidized railroads; but from the first most of them were constructed by private capital, under special legislative charters.

At first the railroads were built in short lengths, with a change at the end of each little link; and were of various gauges, from 4 feet up to 6 feet, a system which required frequent transshipment of car-loads. During and after the Civil War rose a race of railroad kings, of whom the best known was Cornelius Vanderbilt; he consolidated the various local roads between New York and Buffalo, making a great trunk line. Then, from 1875 to 1890 came a period of alteration of gauges; till now all the main roads of the country are of the same gauge, — namely, 4 feet 8 inches, — and cars once started may be sent thousands of miles without reloading.

The railroads speedily began to parallel the canals, with which they competed; even for heavy freight, because they were not interrupted by ice or washouts; and, except the Erie Canal, that from the Hudson to Lake Champlain, and some coal-carrying canals in Ohio and Pennsylvania, the inland canals have all been abandoned. Steam navigation on the rivers has also been paralleled, and almost destroyed, by railroad competition; just as the railroads were becoming the one great means of transportation, arose the system of electric lines, built for the most part on roads and streets, gradually extending into systems many miles in length, busily competing for the passenger traffic everywhere, and in a few places also for the freight business.

222. Highways and Streets.

Power over the means of commerce is divided in the same way as over the objects of commerce: the United States may either restrict or further commerce between the states or with foreign nations; hence it may establish regulations for, or it may aid, highways, canals, railroads, and navigable streams and channels available for interstate and foreign commerce. In practice the United States has made few restrictions on means of transportation, and has aided few; the states and their creations, the local governments, have built, or aided, or authorized, or control, most of the means of land transport.

Some of the states nominally subdivide the highways into state roads, county roads, and town roads; but, though roads when first built may be aided by state or county taxation, the maintenance usually falls to the local governments, and this is one of the many reasons why the United States has the poorest highways among all civilized nations. Germany, Austria, Russia, Italy, Switzerland, and England build magnificent roads, always kept in order, hence capable of accommodating loads from two to four times greater, with the same number of animals, than is possible on most American highways.

The principles of proper road-building as seen in foreign usage are as follows: —(1) The road is only wide enough for two vehicles to pass comfortably, besides a footpath and the necessary ditches; and the land is cultivated on both sides up to the edge of the ditch. (2) Many roads are shaded, often by two rows of fruit trees. (3) Foreign roads are well surfaced and are kept in repair; in thinly-populated mountain districts are good stone roads, always shedding the water to the side, never gullying or rutting, and hence always passable at good speed and with heavy loads. The money that is spent on the highways in most of our hill towns is multiplied by trying to keep up steep roads, which inevitably wash out, and by putting soft material into the middle of the road, where it is certain to make mud. In a soft prairie state like Illinois, continued heavy rains make the ordinary highways literally impassable for wagons. (4) Foreign roads are crooked: by skilful engineering the road accommodates itself to the lie of the ground, habitually going round the hill instead of over it, and is as carefully engineered as a railroad. The up-hill and down-dale roads of New England and New York and Pennsylvania would be thought preposterously wasteful in Central Europe, because of the strain on horses and vehicles caused by going over the bail of the kettle set up perpendicularly instead of going round it as it lies flat. (5) Foreign roads are surveyed, built, and maintained by expert roadmasters, paid out of the public taxes; whereas in many parts of the

United States the person responsible for the roads is ignorant of the true principles of road-making, and farmers are allowed to practise the wasteful and unprofitable system of working out their taxes on the road.

Since about 1890 efforts have been made to improve American roads. The state of Massachusetts has appropriated $4,500,000 in nine years; and the money has been spent in building short sections well graded and well surfaced, as an example to the towns, which have shown entire willingness that state money be spent within their limits, and decided unwillingness to add to it out of their own taxes. Other states, as New Jersey, have appropriated generously to a township or a county which would spend an equivalent amount: but as yet the conception has not found lodgment in the popular mind that properly-built roads add to the value of all the lands along their line, by making it cheaper and easier to get crops to market; and that to be good, a road must be kept in constant repair.

The United States has built one considerable wagon road, — the National Road, begun in 1807 at Cumberland, Maryland, and in the course of about forty years continued westward to Vandalia, not far from St. Louis. This road was well engineered and surfaced, and became a great highway for the settlement of the Western country. It has long since been turned over by the general government to the states through which it runs, and parts of the mountain sections are no longer in use.

In towns, and especially in cities, it is absolutely necessary to build some sort of permanent street which shall not be a quagmire whenever it rains hard. There are many forms of street pavement, of which the poorest is the cobble-stone; a better type is the ordinary rough-squared paving-stone; and the best are the smooth, even, and permanent pavements of Belgian block stone, wood, brick, or asphalt. In general, American cities are ill paved, no matter how expensive the pavements: either there is no suitable foundation, so that the

surface knocks into holes; or the pavement is torn up from end to end in order to lay pipes, and is never properly restored.

A good pavement will cost more per square yard than Turkey carpeting, and may not last more than ten or fifteen years. In some cities all pavements are constructed by the municipalities, and hence people are eager to get their streets paved. In most Western cities, pavements are a charge on the abutting property, and the owners fight them off as long as they can. In Philadelphia, twenty-five years ago, there was a street on which every abutter was allowed to lay the kind of pavement that he liked best. Sidewalks are usually at the charge of the abutter; some cities, like Boston and Philadelphia, have great stretches of brick sidewalk; in the West, stone flagging is more common. In villages and in some cities, plank sidewalks are common, and are convenient so long as they last. Footpaths carefully made along country roads are very uncommon; and still more so are "cut-offs," like the ancient English footpaths, which are public rights of way across fields and from village to village.

When the country was poorer, from the Revolution to about 1850, toll bridges were common; but the tendency is now to make all bridges a part of the free highway. Private turnpikes are now little known in the Northern states, though they are still common in the South; they are constructed on public roads by toll companies who have the right to put up gates and exclude all those who cannot pay a rather high toll. It is a wasteful system, for the community in the end must pay the cost of building and maintaining the road, and also of keeping up the company and paying its dividends. It is a public saving in the long run to remove every private monopoly of the highways.

The United States makes one restriction with regard to bridges, — namely, that no navigable stream shall be crossed except by a bridge which shall be approved by the secretary of war. The plan of the proposed great bridge across the

Hudson River at New York City, authorized in 1894, was abandoned because the secretary would not allow a pier in the river.

223. Navigable Rivers and Canals.

America has magnificent natural waterways. As the Atlantic front is a drowned coast, which has subsided since the river channels were cut, the sea creates such estuaries as those of the Kennebec, Merrimac, Charles, Connecticut, Hudson, Delaware, Susquehanna, and James, penetrating far up into the country. On the north is the chain of Great Lakes, which is really a broad, expanded river system, with the head waters at Chicago and Duluth, and with the mouth at Buffalo. The tributaries of the Mississippi descend with scarce a rapid from points a few miles below their sources in New York, Minnesota, Montana, and Colorado to the Gulf of Mexico, a turbid system of liquid roads converging on New Orleans.

The network of interior rivers, as well as the lakes, are subject to federal control, as parts of a system of interstate navigation. On both lake and river the "rules of the road" are enforced so as to prevent collisions, and steamboats are inspected annually by federal authorities.

The federal government has also spent immense sums in improving the internal river and lake navigation. The principal works are as follows: —

(1) Canals around the few points interrupted by rapids or shoals, especially at Moline (Illinois) and Louisville. Large sums have also been spent in improving the channels of the Detroit and St. Mary Rivers, and especially on the duplicate canals around the falls of Sault Ste. Marie. The lake commerce is enormous: the tonnage passing through the Sault canals on the American side alone in 1902 was 32,000,000, and the tonnage through the Detroit River was greater than that through the Suez Canal. Though most of the Western rivers tributary to the Ohio and Mississippi are deserted by commerce, large sums are still spent in improving them.

The Muscle Shoals Canal on the Tennessee has cost $3,500,000, to accommodate annual commerce worth about $300,000. On the Missouri River above Kansas City there are no regular steamers plying; yet $5,000,000 has been spent on the river since 1890.

(2) Attempts to confine the rivers and prevent changes of channel by a system of levees, or artificial dikes, particularly in the Lower Mississippi Valley.

(3) Very expensive works on both the Mississippi and the Missouri, to secure deep water by confining the channel between walls. It is not yet certain that the expensive revetments of the Mississippi will stand a phenomenal flood. Since the Civil War the United States has expended about $125,000,000 on the Mississippi and its tributaries, now all paralleled by railroads.

(4) The jetty system at the mouth of the Mississippi and other gulf ports, which, by the construction of narrow, straight outlets confined between sea-walls, forces the rivers to dig out the bars themselves and make deep-water channels out to sea.

Nearly all the interior canals in the country have been constructed by the states, or by companies chartered and favored by the states. Of these the most costly and the most satisfactory is the Erie Canal, 363 miles long, with a summit level of 570 feet above the sea. The original cost was $9,000,000, to which down to 1895 had been added $56,000,000 for enlargement; the receipts for tolls down to 1883, when it was made free, were about $135,000,000; repairs had cost about $42,000,000; since 1895 the state has paid for additional enlargement $9,000,000. New York also owns the Oswego Canal to Lake Ontario, and the Champlain Canal to Lake Champlain, connecting thence to Canada. The total amount spent by New York for canal construction, without counting repairs, has been $94,000,000.

Pennsylvania tried to equal the success of New York, but nature was not propitious. Canals were constructed up the Juniata, up the west branch of the Susquehanna, and from

Pittsburg eastward to the foot of the mountains and northward to Lake Erie, at a cost of $42,000,000; but, at the highest success, boats built in sections were floated to the neighborhood of Altoona, hoisted over the ridge by inclined railroads, and let down to meet the Western canal. This whole system is now abandoned, as is the Maryland canal parallel with the Potomac to Cumberland and intended to cross the mountains, and the Virginia canal up the valley of the James. Ohio has spent $15,000,000 for canals, Illinois $7,000,000, Indiana $9,000,000; but the only link now in actual operation in those states is from Cleveland on Lake Erie to Portsmouth on the Ohio.

The capital spent in canals outside New York, aggregating nearly $80,000,000, is not a total loss, for it cheapened transportation for many years, and for some time remained a wholesome check on railroad rates; but many of the canals were expensive to build, very expensive to maintain, and never could command enough traffic to justify them.

A few profitable lines of canal exist across New Jersey and in the coal regions; but in the last thirty years no important line of state canal has been constructed except the Calumet Canal, which is virtually an outfall sewerage system for Chicago. New York is now considering putting another hundred millions into the Erie Canal; otherwise, if any further canal systems are constructed they must be built by the federal government.

224. Harbors and Internal Improvements.

Federal works for waterways and water entrances of every kind are called "internal improvements," and are covered by "river and harbor bills," passed commonly once in two years. Expenditures for these purposes did not begin till nearly twenty years after the adoption of the constitution, and from 1806 till 1822 were confined to the Cumberland Road. In 1808 Secretary Gallatin reported a comprehensive scheme for roads or canals from Maine to Louisiana, and from Washington to Detroit; and in 1816 a strong movement was made for national aid.

The system was attacked on constitutional grounds, first by Madison in his veto of 1817, then by Monroe in his veto of May, 1822, later by Jackson in several vetoes. Though these three presidents failed to find in the constitution any authority for such improvements, friends of the vetoed measures discovered abundant implied powers in the authority of Congress to regulate commerce, to establish post-offices and post-roads, and to make war, since good roads and canals would facilitate all those powers. The constitutional objection was repeated by Polk, Pierce, and Buchanan in lively vetoes; but since the Civil War it has practically disappeared from view. In making up the river and harbor bills, the combination between the Eastern coast interests and the Western river interests causes these bills to appeal to both sections; and the Lake and Pacific coast members join in. The appropriations for this purpose from 1822 to 1902 amount to about $400,000,000.

Harbor improvements are of two kinds: (1) Breakwaters and piers, as protections to shipping. The Delaware breakwater in Lower Delaware Bay, and Holmes Hole off the island of Martha's Vineyard, sometimes protect hundreds of sail. The lake harbors on Michigan, Erie, Ontario, and Superior, especially Chicago, Cleveland, Buffalo, and Milwaukee, have huge breakwaters. (2) The deepening of harbors, principally by dredging, so as to keep passages open across the bars which form where the river currents, carrying detritus, strike the colder and heavier tide-water; and the removing of obstructions in the bottom of channels. From 1867 to 1899 the government spent over $4,000,000 in undermining a reef in Hell Gate, just above New York City; and most of the Southern harbors require very expensive works to reach deep water, as at Charleston, Savannah, New Orleans, Aransas Pass, and Galveston.

The expenditure of the federal government for these objects is intrusted to the secretary of war, and is supervised by government engineers, who are military officers. Without a pre-

liminary survey and report on the cost of a new improvement, it is difficult, though not impossible, to get an appropriation. These estimates are gathered together and submitted to the River and Harbor Committee of the House, which then prepares a bill. The appropriations are very detailed, but are subject to the general restriction that they must be spent by the secretary of war, who may not pay out all the money appropriated if he cannot find the place to spend it wisely.

The great defect of the river and harbor legislation is that small and inconsequent items are often inserted, that it is impossible to get Congress to appropriate once for all for a great improvement; hence work is delayed and interrupted by waiting for the necessary continuing appropriations, and expensive works may be destroyed because money enough has not been authorized to bring them to a condition where they are safe. Government work is invariably expensive, even when contracts are made with private parties. The expenditures on the larger harbors and the greater rivers have stimulated commerce; but there are some cases of very extravagant use of the public money. For example, the canal constructed between the Fox and Wisconsin Rivers, intended to connect Lake Michigan with the Upper Mississippi, which has cost the government $3,000,000, is practically of no service to navigation, and is chiefly useful for furnishing a gratis water-power to private mills.

225. Railroads.

Since a railroad must have a right of way, requiring the use of the state's privilege of eminent domain, the construction of railroads rests almost wholly on state authority. The early lines were short, and many of the states undertook to build for themselves. For instance, in 1837 Michigan authorized a loan of $5,000,000 for internal improvements, purchased a previous private charter of the Detroit and St. Joseph Railroad, and built a heavy wooden framework all the way as a basis for

strap iron rails. In 1841 the line kept four locomotives busy, but in 1846 it was sold to a private company. Ohio, Georgia, North Carolina, and other states built pieces of state road at different times; and Massachusetts aided in the construction of three roads to the Hudson River, — the Boston and Albany, the New York and New England, and the Hoosac Tunnel Line. Of all these state systems, a few score miles owned by the states of Georgia and North Carolina, but now leased to private companies, are the only relics.

There were various reasons for the substitution of the private system. (1) State railroads had to stop at the state boundary; whereas private roads, with charters in both states, easily ran from one to the other. (2) The Western states were poor and heavily in debt, and were glad to realize on their property. (3) State railroad management was subject to powerful local influences. (4) No state railroad in the whole country ever paid a steady interest on the cost of its construction.

The system of private railroad charters also had its defects. (1) Most early communities were eager to get railroads, and were over-generous with charters. Some states, indeed, regularly inserted provisions retaining to the states the right to buy in the railroads at any future time, and others made restrictions as to the rates of fare; but few states, if any, required the publication of accounts in ways which would protect investments, or from the beginning adequately taxed either the road-beds or other property of the railroads. (2) Many of the early private companies failed: the original stock of the Erie Railroad, for instance, was all wiped out of existence twice before it became a paying property.

Nevertheless, with interruptions during the various commercial panics, the construction of railways has steadily gone forward. In 1831 there were 140 miles; in 1841, 3,400 miles; in 1851, 10,000 miles; in 1861, 30,000 miles; in 1871, 50,000 miles; in 1881, 100,000 miles; in 1891, 164,000 miles; in 1901, about 200,000 miles. This does not include second tracks and sidings, which make about 70,000 miles more.

The capitalization of the roads was nearly $13,000,000,000 in 1901; they carried 600,000,000 passengers, and over 1,000,000,000 tons of freight; and they earned $1,600,000,000, of which over $500,000,000 was net. About 1,000,000 persons are employed in the railroad service.

The enormous traffic of railroads makes them the most important private interest in the United States: they affect every community, and nearly every individual. That the railroad business is conducted so smoothly and easily, that only about one passenger in a million is killed or injured, that freight reaches its destination in most cases, that the employees are kept busy and paid, is a tribute to the great organizing power of the American.

Railroads come under the general legal principle of the "common carrier," — that is, they are compelled by law to carry every decent person who desires passage and can pay the fare, to receive everybody's shipment of freight, and to charge all persons the same rate for the same service. Passenger rates are stable and little subject to manipulation, except that too many people who can best afford to pay their fares get free transportation. Through fares are very low, — about two, two and a half, or three cents a mile for long distances; local fares run up from two to ten cents a mile according to locality, and are higher than in most European countries.

Railroad management is, however, subject to many irregularities which do not always appear on the surface. It is easy, for instance, to discriminate between shippers by giving special rates on heavy shipments; and especially by charging the same nominal rate to all comers, but allowing rebates to the favored. Since the greater part of railroad business passes over the lines of at least two companies, much of the business is done by fast freight and parlor-car companies, which can be so managed as to take the profit away from the ordinary stockholder of the railroad. Then, in the consolidation of railroads, minority stockholders, or the owners of small lines, are often badly treated.

To face these difficulties there are only two agencies, the states and Congress. Since nearly all the charters spring from the states, the states may prescribe regulations for the speed of trains, the character of the accommodations, the protection of grade crossings, the management of stations, and like matters; and they may regulate rates on business which begins and ends within a state. About half the states in the Union have railroad commissions, some of them empowered to issue positive directions to the railroad companies, others having only the right of investigation and public report. In the seventies, the so-called "Granger movement" was a pressure on the state legislatures to reduce railway rates. Later the Supreme Court held, in the case of *St. Louis, etc.* v. *R. R. Co.* (1895), that any state regulation must be "reasonable," and that the courts must judge whether a given rate is "reasonable" in the legal sense. No state law can control the interstate commerce of persons or goods: if the states attempt to tax railroads or steamship companies on interstate business, or to regulate such traffic by inspection laws, the Supreme Court disallows the statutes.

By 1880 the railway business got into confusion, through the reckless competition of parallel lines. The trunk lines from Boston, New York, and Philadelphia to the Western cities tried to protect themselves by "pools," — that is, agreements under which each of the trunk lines was to have a certain share of the through tonnage and receipts. At the same time, in order to secure through business, and especially export business, the railroads got into the habit of making lower rates from the great distributing centres of the interior to the seaboard, and vice versa, than on shorter distances on the same lines. For instance, the rate from Chicago to Harrisburg was regularly higher than the rate from Chicago to New York, to the great distress of the people of the smaller cities.

The question grew so serious that in 1887 Congress passed the drastic Interstate Commerce Act, which introduced many reforms. (1) The rates of transportation for both passengers

and freight must be posted publicly in large type, and may not be raised or lowered without notice. (2) Railroads are compelled to furnish abstracts of their accounts in a prescribed form. (3) Discriminations and secret advantages are absolutely prohibited. (4) Both pools and short-haul discriminations are positively forbidden. (5) To carry out these provisions a commission of five members was organized, each to have a six-year term, with power to investigate and hear complaints, and to direct railroad or steamship companies to remedy them.

The commission set to work, but in its existence of fifteen years it has not accomplished what was hoped from it. It is both administrative and judicial. Petitions to it take the form of suits against railroad companies, with counsel and judicial procedure; this makes it an anomalous court, and it has not sufficient power to execute its own decisions. It is difficult to get evidence of special rates, because neither the persons who profit by them nor the railroad will complain; and, if summoned by the commission, they sometimes refuse to testify, on the ground that such testimony may criminate them. The commission has obtained fair returns of the railroad accounts, which it publishes in annual reports; it has done much also to bring to public attention cases of railway discrimination; it has published its decisions in a series of regular judicial reports, and has thus established a body of railway law: but it has never succeeded in breaking up discriminating rates to large shippers, or secret concessions to friends of railroad officials.

The struggle for business between the trunk-line roads has been reduced by the steady progress of railway consolidation. The New York Central Road bought up the West Shore and Nickel Plate Lines from New York to Chicago in order to stop competition; the Pennsylvania Railroad got control of its rival, the Baltimore and Ohio; and about the year 1900, owners of the consolidated systems came to a friendly understanding, which practically means that these four trunk lines

are conducted as one system, that they can dictate to the weaker roads, such as the Erie and the Grand Trunk, and that business can be divided by a quiet understanding, without violating the pooling clause of the Interstate Commerce Act. The roads from Chicago to the Mississippi have come under a similar understanding: in 1901 an attempt was made to consolidate the Northern Pacific with the Great Northern; it was resisted in the courts, but the two systems are operated under one management. The Southern railroads have also been combined into a few large systems; and the general policy of all the railroads in the country is probably dictated by less than twenty persons, who act through a friendly understanding. Some observers feel confident that this is simply a stage on the way to a national ownership of the railroads.

226. Public Aid to Railroads.

Besides the construction of a few state railroads in 1830–1850, the national, state, and local governments have frequently given aid to new roads without controlling them. (1) The right of way of many of the railroads through public lands has been given by the United States; through state lands, by states; and through streets, by cities. The New York Central Road runs the whole length of Syracuse on grade in the middle of the highway, by permission of the city government. (2) The states have frequently subscribed for stock in railroads: Virginia between 1837 and 1857 made more than twenty such investments. (3) The states have frequently given or lent money to railroads: in 1860 six railroads together owed the state of Alabama nearly $1,000,000; and the state of Massachusetts in 1867–69 lent $3,600,000 to the Boston, Hartford, and Erie Railroad. (4) Local governments have frequently been authorized to subscribe for stock, or to make cash bonuses to railroads; and many counties, towns, and cities have run heavily into debt in order to bring new railroads. The city

of Baltimore has always been a heavy stockholder in the Baltimore and Ohio Railroad; and the city of Cincinnati now owns the Cincinnati Southern Railroad, which cost over $20,000,000. (5) Railroads have practically had public aid by an almost universal system of low taxes.

The United States began its relation with railroad construction by inaugurating a system of land grants in 1850. The Illinois Central and other roads radiating west and northwest from Chicago, though chartered by the states, received heavy national grants of land. When in 1862 the Pacific railroads became necessary, most of the line was through territories; and therefore the federal government itself enacted the charters, and bestowed on the companies land grants aggregating about 100,000,000 acres. The usual method of land grants was to give to the railroads the alternate sections in a strip of land sometimes twenty miles wide, and to sell the remaining sections at double price. The money value of these gifts is hard to estimate, but it was probably not less than $200,000,000. The United States also advanced money to the Pacific railroads under the act of 1864, by issuing bonds (at $16,000 to $48,000 a mile for completed roads) to four companies, — the Union Pacific, Kansas Pacific (including the Central Branch), Sioux City and Pacific, and Central Pacific (including the Western Pacific). Of the $64,000,000 issued, $55,000,000 went to the two roads for the line from Omaha to San Francisco. As the interest was paid on these bonds it was charged against the railroads, with the result that, when the loan matured about 1899, the debt was $136,000,000. As the government stood ready to take over the roads if the debt was not paid, the owners of the Union and Central Pacific Roads found the money to pay the principal and interest paid by the United States. The Kansas Pacific and Sioux City settled for about the principal. The government received $126,000,000, so that it was out of pocket only about $10,000,000 and the interest on its interest payments.

227. City Traction Systems.

In cities the carrying of passengers has long been an important business. The earliest form of public travel was by stages or omnibuses, which ran on the regular streets and were subject to all the inconveniences of small capacity and bad roads. The Fifth Avenue stages in New York City are one of the few remnants of this system. About 1845 began the first city railroads, very small and crude affairs, with strap rails bolted to wooden stringers. Such lines appeared in all the considerable cities before the Civil War, and down to about 1890 the horse-cars continued to be the only practical system. The horse-railroad system had about reached its limit: it occupied in the streets the length of both horses and cars, was much interrupted by storms, and could be carried over steep grades only by putting on extra horses. Various forms of motor had been tried, — steam, compressed air, cable, and electric storage battery, — but none of them fulfilled the conditions.

The question was solved by the perfection of a method for taking power from a continuous wire; and the effect was to revolutionize the whole business. Heavier and larger cars were at once introduced, some of them seating seventy-five persons, a half more than the ordinary railroad passenger car. It is easy to increase the number of cars in rush hours; the space necessary for horses is saved; speed is readily raised to any point consistent with the safety of ordinary travel, and often much above it. Almost everywhere the trolleys are fed by wires strung overhead, and fatal accidents are too frequent. In New York City most of the trolley wires are all placed in slots below the streets.

The convenience of travel increased so much that the number of passengers rose unexpectedly: the consolidated Boston lines in 1880 carried 59,000,000 passengers; in 1900, 201,000,000. The heavy cars required the complete rebuilding of the road-beds and the introduction of heavy rails, which,

however, are in most places so carefully laid as not to damage wagon wheels. A service supplied with power from central depots and involving large capital tends toward consolidation; and in nearly every city in the Union there is now only one large traction company, or perhaps two.

The question of rapid transit in New York City is of special difficulty, because the city is situated on a long and narrow island, with a great rush of travel, — down town in the morning and up town at the end of the day. The first solution was there found in elevated roads, of which there are four, stretching the whole length of the island from north to south, besides five in Brooklyn. These elevated roads, built from 1873 to 1890, under acts of the legislature, received the valuable privilege of building their lines in the public streets. Even the legislature, however, could not deprive the abutting property-owners of their rights, and they brought suit against the companies for damages. The companies fought off and delayed the suits, until it became evident that along most of the lines property was worth more after the building of the roads than before; hence the actual damages paid were small. The elevated roads of New York now carry about 235,000,000 people annually, and have proved very profitable investments to their owners.

The example of New York has been followed by only two other cities: Chicago and Boston both have elevated structures, built by private companies. In Boston the elevated and surface roads are managed together, by a system of free transfers from one to the other.

The traction companies in American cities are wealthy and powerful. The Philadelphia Traction Company has about 450 miles of track within the limits of Philadelphia, employs 7,400 men, and expends large sums in construction and maintenance. As the cities have grown and passengers have increased, the surface railroads have striven manfully against the three obvious methods of giving advantages to the public. (1) They have not reduced the fare, which throughout the Union is

normally five cents, though in many foreign cities short-distance passengers pay as low a fare as one cent. (2) They have not increased the accommodation so as to give everybody a seat. In Paris nobody is admitted to the interior of a car unless there is a seat for him. (3) They have not paid sufficient sums for their privileges. The profit of a traction company really results from its right to build in the public highway: the New York elevated roads, for instance, have issued about $10,000,000 in bonds, based upon the value of their franchises, that is, of their privileges.

For locations, for extension of lines, for increase of tracks, and so on, the traction companies are dependent upon the city governments for the time being; and there have been some startling cases of the buying of franchises from city councils. Where money is not used, there is a regular system of securing the support of state and city legislators by giving them the privilege of designating men for employment by the traction companies; in some cities nearly every man on or about the street cars owes his place to the influence of a politician. This means an increased expense in running the road, and of course a company does not submit to such influence unless it sees something to gain through the favor of those who have votes.

228. Country Electric Lines.

Since about 1888 has developed a new system of country transportation, the electric trolley car, which runs in all weathers, can carry as many people as ten stages, reaches a speed of twenty miles an hour or more, and receives its power from a central station, which is kept up at a moderate expense. The limit of the old horse-cars radiating from cities was about an hour's travel, six miles: many electric lines habitually bring people into the cities from ten, fifteen, or twenty miles away; and such lines are agents in redistributing city populations and making suburban life easy.

This is only part of their service: throughout the United States, trolley lines are being pushed out into the open country,

twenty, thirty, or forty miles; adjacent cities are connected; country towns are strung like pearls in a necklace; and remote villages are brought into touch with the rest of the world. The country trolley lines have usually been local enterprises at first; but, as they have proved profitable, syndicates of heavy capitalists have been formed to buy up the short lines, extend them into long stretches, and combine them into systems. The trolley lines in a radius of about fifty miles from Cleveland have nearly all been brought into one ownership.

The prime advantage of the trolley lines is their cheapness of construction; for most of them are built on the highways widened for the purpose if necessary; and where they strike off on their own rights of way, it is over cheap land easy to acquire. The trolleys need no station buildings, and concentrate their car houses and power houses in narrow spaces. As they run on the surface, they need neither bridges over the highways nor gates or watchmen; and the switching is done by the men on the car. The unit of service, the ordinary trolley car, is light in comparison with the locomotive and one car, which is the minimum of railroad service. Trolley lines create their own business: wherever they extend, people move in, houses are built, and the habit of travel is easily formed. Many of the lines are by their charters confined to conveying passengers; but in some parts of the country they carry baggage, express, mail, and light freight. Here is the opportunity for developing the system: wherever they extend they ought to supersede long wagon hauls, and to develop an express system for small manufactures and for the products of the farm and market garden.

The short trolley lines radiating from cities get a large amount of local travel which would otherwise go to the railroads, and for distances of twenty-five to fifty miles they are beginning to take away rail passengers. Should the consolidation continue so that long-route cars can be run, they will compete on distances of from a hundred to two hundred miles, thus cutting off a profitable part of the railroad busi-

ness. Some railroads are so far aware of this competition that they have bought up the trolley lines, not to close them, but to carry them on in harmony with the regular railroad service, which must always hold its own for through travel and for heavy freight.

As yet the relation of the states to electric lines is little developed. A large part of the trolley mileage is on the surface of public streets and roads; and, as these lines spring out of the previous local lines they usually need the consent of the local authorities for their location, and are subject also to local regulations as to fares, rate of speed, fenders, protection to passengers, and so on. Eventually the states will be obliged to enact systems of laws for the control of trolley systems, as they have done for railroads.

229. City Ownership of Traction Lines.

As a remedy for the present difficulties in transportation within the cities, municipal ownership has of late years often been suggested. In the earlier stages of transportation there seemed no necessity for such a measure: passengers were transported by anybody who could furnish the capital; if street A were occupied by one company, a competing company could have street B. The gradual consolidation of the companies, and the occupation of every important thoroughfare by rails, have long since put an end to the possibility of competition. The street railroads have the use of definite strips of the public streets, and are bound to furnish transportation at the regular rate for all the people who want to be carried. Unless the state and city governments are vigilant, there will in time be no sufficient inducement to the owners of the systems to accommodate the public or to take their fair share of public burdens.

So little was impending monopoly foreseen that there was at first little pressure for perpetual franchises: by the original charters, the car companies received franchises running from twenty-five to fifty years. Since the introduction of the elec-

tric cars, some of the cities — for example, Philadelphia and Pittsburg — have given perpetual franchises for all the available routes within their limits, without exacting a dollar in payment. In Philadelphia immensely valuable franchises were given away, although a responsible man offered to pay $2,500,000 in cash for those privileges.

The great political power of the traction companies, the importance of the service which they render, and the difficulty of getting adequate payment for the use of the public streets suggest public ownership as a remedy. That system has been tried in only one American city: the legislature of Michigan in 1899 passed an act authorizing the city of Detroit to own and operate the street railroads, the traction company to be indemnified for its property; this act was, however, held unconstitutional by the Michigan Supreme Court in July, 1899. The system of municipal ownership prevails in Toronto and in some other Canadian towns; and many of the provincial cities of Great Britain, as Huddersfield, Lee, Glasgow, Sheffield, and Liverpool, have municipal tramways.

Two American cities have provided at public expense for underground subways, which are to accommodate a part of the traction lines. The Boston subway, about three quarters of a mile long, was constructed in 1896–1898, at a cost of about $4,000,000, by a commission authorized by the state, and with a previous understanding that it should be leased to the West End Street Railway Company for a period of twenty years, at a rate which would pay interest on the cost and eventually extinguish the principal. It is now operated in connection with both the surface and the elevated lines through the heart of Boston.

In 1900 the city of New York undertook a similar but vastly greater task, — the construction of an underground system, much of it hewn through solid rock, 25 miles from Brooklyn to the Bronx, passing under the East River and across Manhattan. This great public work is to cost $38,000,000; it is to be leased for fifty years on terms similar to those of the

Boston system, and is to be operated in coöperation with the elevated roads.

If it is suitable that cities should own street railway systems underground, it is difficult to see why they may not own them on the surface or in the air. Hence, to many cities the idea has come that the way out of the trouble is for them to buy up the existing roads and build the new ones. The objections are obvious. Can city governments, which carry on their regular functions at large expense and with confusion and corruption, — can they add so important a service as the street railways? Would a political motorman or division superintendent give better service than the employee of a company whose interest it is to save wherever possible? Could city governments resist the pressure to build non-paying lines in thinly-settled districts, or to reduce fares below the actual operating expenses? Can city officials be trusted with business functions, with the management of great industries? The answer to these questions is briefly that, so far as the personnel is concerned, it is now about as political as it would be under a city system. In some parts of the country municipal gas and water are thought to go beyond the province of municipal government; yet other cities successfully maintain them. The experience of the English and Scotch cities in municipal tramways is on too small a scale to serve as a basis for argument as to municipal ownership in America.

The main arguments for public ownership are that the street railway is a part of the public street and of the system of public movement; that it is impossible for one set of authorities to control the edges of the street and another to control the middle; that public ownership is the only means by which the advantage of increased travel and mechanical improvements can be secured to the public. In 1902, on a special vote taken in the city of Chicago to ascertain the opinion of the people of that city on the acquirement of the whole system of surface traction by the city, the vote was about four to one in favor of it.

Part X.

General Welfare.

CHAPTER XXVIII.

EDUCATION.

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231. History of American Education.

The federal constitution has often been misconstrued as giving Congress authority to do anything which is for "the general welfare." The clause referred to gives Congress power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare." The power to lay taxes for the general welfare does not give power to do other things for the general welfare; and the clause is not an enlargement, but a limitation, even of the taxing powers. On the states and local governments falls the responsibility for the general welfare.

No part of the functions of government is more important than to further the intellectual and moral uplifting of the people; and, with the exception perhaps of the Dutch, the New England colonists were the first to realize that children are educated, not for themselves or their parents, but that they may serve the state. Some of the English schools in the sixteenth century were supported in part by parish or town taxation. Formal public education in the colonies began in 1636, when the government of Massachusetts contributed to the founding of Harvard College, which is still a respectable institution. In 1647 the General Court of that colony passed an act requiring a town of fifty families to maintain a school, and a town of one hundred families to maintain a grammar (that is, a Latin) school. A similar act was passed by Connecticut before 1650. In most communities these schools were not free, inasmuch as those who could afford it paid fees; nor were they public, inasmuch as they were not open to girls.

The pre-Revolutionary colleges were Harvard (1636), William and Mary (1693), Yale (1701), Princeton (1746), Kings, now Columbia (1754), University of Pennsylvania (1759, reorganized 1779), Brown (1764), Rutgers (1766), and Dartmouth (1769), all of which were helped from the colonial treasuries. Just before the Revolution there was a movement for the establishment of endowed secondary schools: among them Phillips Andover, Phillips Exeter, and other New England academies; preceded by the William Penn Charter School which was founded in 1689. Nevertheless, down to the Revolution both schools and colleges were ill-housed and poorly equipped, with narrow curricula taught perfunctorily. The lower schools went little beyond reading, writing, and ciphering; in the secondary schools appeared some classics; in the colleges the studies were chiefly Greek, Latin, and mathematics, with a little book science and in some cases Hebrew. Previous to the Revolution, no such thing as a technical or professional school of any kind existed in the United States.

After the constitution of 1787 new colleges were founded, among them several state institutions supported almost wholly by taxation, especially the universities of North Carolina and Virginia. Professional schools began to spring up, beginning with the medical schools of the University of Pennsylvania and Harvard, soon after followed by law schools and distinct theological schools. Academies arose in many parts of the country, and proved effective centres of education. In the first third of the nineteenth century appeared church schools and colleges. Yet nearly all the education of that time depended upon the personal character of the presidents or principals, and of the college and school teachers; methods were still dry and lifeless; text-books were poor; and there was little in the way of libraries and apparatus.

Meanwhile the common schools lagged behind. In 1838 Horace Mann, first secretary of the Massachusetts State Board of Education, pointed out the three fundamental defects of

the common schools in the country, and to a large degree in the towns: poor teachers, poor buildings, and poor methods. Other New England states woke up to their imperfections; and New York and Pennsylvania, in which up to this time there had been no general systems of common-school education, now began to found public schools. Ohio and the states farther west used immense government grants of land for school purposes; but in all parts of the country the rural school developed very slowly down to the Civil War.

In most of the large Northern cities, public high schools began to spring up about 1850, carrying education above the grammar schools, and furnishing for the cities what the academies furnished for many country towns. Still all was chaotic; in many states the country schools were held but a few months in the year; and even in the cities there was little school organization.

After the Civil War came a new era in education. The city schools were organized into systems, with regular courses of study leading from the first year in the primary to the last year in the high school, — a period of eleven or twelve years of continuous schooling. Buildings were constructed with due reference to light, heat, and ventilation. The high schools began to increase in number and in size. The state universities already established began to grow, and in 1862 the states received special land grants from Congress for agricultural colleges; in some instances these funds were applied to the preëxisting state universities. The colleges throughout the country began to come into closer relations with academies and high schools, which became "feeders" to the higher institutions. Many of the older colleges became universities, by adding professional and technical schools. The churches, especially those made up of immigrants from other countries, established not only the old type of colleges and boarding-schools, but also large day-schools in the cities.

In 1865 Vassar College was opened, the first of several institutions to give a thorough college education to women

only. Co-education, which had long been usual in country schools and in some academies, and which was adopted as the fundamental principle in Oberlin College in 1841, was now acknowledged in nearly all the state universities. Normal schools for the training of teachers, strongly advocated by Horace Mann, spread through the country. Public technical schools — the first one established in Pennsylvania in 1854 — increased; and most of the great universities now include scientific schools. Professional schools in law, medicine, and theology have increased in number, in length of course, and in thoroughness; and in 1874 Johns Hopkins University inaugurated the first distinct graduate school for the training of experts and of college and secondary teachers.

At present the provision for education in the United States is as follows: — (1) Individuals and corporations carry on schools and colleges at their own expense, from the fees of pupils, or by endowments, with little control from any public authority.

(2) The federal government has a "Bureau of Education," with a commissioner whose public function it is to collect and disseminate information; he issues a bulky and important annual report, and monographs; he is also one of the principal educational leaders of the country, a frequent speaker at educational meetings. The government maintains a system of city schools in Washington, many schools for the Indians, and the admirable military and naval academies; and it keeps up a naval observatory, a geological survey, the Smithsonian Institution, and other scientific establishments which are really educational. Many suggestions have been made that it ought to found a national university at Washington, a plan which would be carried out but for the existence of more than twenty large and well-managed endowed or state institutions.

(3) Most of the states maintain some forms of university or agricultural college, or both; and systems of normal schools. In addition, the state governments exercise some supervision over local schools, particularly in the country; and in some

cases, through invested funds or by direct appropriation, they add to the school revenues.

(4) The localities are responsible for instruction in common-school grades and high schools. They tax themselves to maintain such facilities, and elect boards of education, which in turn choose superintendents and other school officers. The most serious defect of our educational system is that most states do not sufficiently insist that the localities shall provide schools of a high character, with properly-trained teachers.

232. Private and Church Schools.

Few American communities have reached the German system of requiring that all children attend school; and, of those that do have this requirement, Masssachusetts is almost the only state which really makes the provision effective by providing a system of truant officers to follow up delinquents. Not one has adopted the French principle that no child can attend a school, or take lessons of a private tutor, unless the school or tutor has received the license of the state to teach. It would be a reasonable use of the state power which licenses druggists, and in some states plumbers, if the teachers in all American schools, private as well as public, were compelled to satisfy public examiners that they were educated persons.

A large part of our education is carried on by private institutions. In many small communities there are small "select schools" for children of neighboring families able to pay fees. Other schools are carried on as commercial enterprises: such are the business colleges, common throughout the Union; boarding-schools, often of a military type; private normal schools; the college preparatory schools in cities; and even a few colleges are run for profit.

Next come a variety of endowed private schools, some of them intended especially for the sons of wealthy men who can afford considerable fees, others more democratic. Some such institutions draw boys or girls from all over the Union, and are therefore really national schools. Many of the endowed acade-

mies are denominational, in the sense that the religious services are those of some particular church, as the Episcopal, or the Baptist, or the Congregational. Another type of school is established by a church solely for its own members, and with the distinct purpose of perpetuating the religious beliefs of that church. Such are the Catholic parochial schools, established wherever they can be afforded; and the similar schools of the German Lutherans in the Western and Northwestern states. All faithful and devout parents are expected by the ecclesiastical authorities to send their children to these schools.

In the year 1889 the legislature of Wisconsin took notice of the fact that many such schools in that state were conducted in other languages than English; accordingly the Bennett Law was passed, requiring all schools, public and private, to give their instruction in English. The result was a political upheaval, and the next legislature hastily repealed the Bennett Law. The principle, however, was sound: for it is contrary to the interests of the community to educate children without a fundamental training in the language of this country; or to foster the continuance of islands of foreign-speaking population, since they tend to become separate communities, hard to reach on public questions.

233. Public Schools.

While for about seventy years it has been a fixed principle that the state is bound to furnish an education for every child who desires to avail himself of public instruction, only in the last forty years has this principle extended to secondary education in all the larger places; and only in the last few years have public high schools developed with great rapidity in the Southern states, which have hitherto been unprovided.

In few states is there a systematic public control even of the public school. The widespread principle is that each community must keep up schools of a certain class, — the so-called "common" schools in country districts, primary and grammar schools in towns, high schools in cities; but each town and city

has large freedom of instruction, and selects its own teachers. A few states go much farther: Massachusetts, for instance, provides by law that every town must maintain a high school, or pay the tuition of its children in the high school of a neighboring town; that every high school shall include a specified list of subjects in its curriculum; and that the town must raise sufficient money to provide adequate instruction in all those subjects.

Nearly every state exercises more or less supervision through a state superintendent of education, whose powers are usually those of investigation and admonition; and through county superintendents with similar powers. In Massachusetts, every town must be in the district of a paid superintendent. In New York the state control is more centralized and effective than anywhere else. The Board of Regents of the State University is really a central educational board, presenting subjects for the common and high schools, and holding its own examinations of pupils.

Most states require all teachers in public schools to hold certificates gained in examinations, usually conducted by state or county superintendents; but the examinations commonly test a low standard of learning. Some states have a text-book system, by which books are selected for a series of years by a board; and in California text-books are prepared by state authority.

The smallest unit of school administration is the school district, which in many states has its own board, raises its own taxes, and appoints its own teachers. A boasted advantage of the district school is that the younger children listen to the recitations of the older, and hence everybody knows something about everybody else's lesson. In fact, however, the district school is wasteful and inefficient: it is scrappy, for sometimes forty different classes have to recite within five hours; the teachers are not trained in all their subjects or for all the ages which they teach; and often they are themselves scantily educated. In some parts of the country, neighboring districts com-

bine to build a graded school, and at the public expense carry the distant children to and from school. This system saves much expense of care and maintenance, and makes possible, for a somewhat higher rate of taxation, a classification of the children which is otherwise possible only in towns.

The graded schools of the small towns are well housed, but do not insist upon properly-trained teachers, and hence do less than they might with the money that they spend. In the elaborate school systems of cities with populations of from 50,000 to 200,000, we look for the best results of the American public-school system. Such cities usually have vigorous superintendents, backed up by lively public interest; and the number of children is great enough to allow complete grading. Many cities have public kindergartens, which take children of four to five years of age in hand and teach them simple beginnings. The next division is usually the primary, extending over three to six years, followed by about four years of the grammar school; these two systems taken together are often called simply "the grades." Children are moved up from grade to grade commonly in the middle, as well as the end, of the school year; but in some American schools it is not very hard for quick children to skip a grade and so get out of the iron machinery of promotion. In most school systems, the normal age for ending the grammar school is fourteen to fifteen.

In order to utilize the plant, and to provide for those who cannot be accommodated in regular school sessions, night schools and night high schools have grown up; and vacation schools are now frequent.

At every age after about six years, the school children fall off in numbers: in a city where 10,000 children enter the school every year for the first time, about 6,600 go up to the grammar schools; of these about 1,775 go to the high schools; and not more than 350, or one in twenty-eight, graduate from the high schools.

The high school is in many ways the most important part of the system: it completes the public-school training; it offers

an opportunity for the willing and the gifted to go farther; it has laboratories and other opportunities of training outside of books; it presents a variety of courses, either by permitting pupils to make some selection out of many subjects, or (of late years) by providing a system of parallel schools, as a classical high school, an English high school, a manual-training high school, and perhaps a distinct commercial high school. In range of studies, intelligence of method, and thoroughness of work, good high schools now go farther than good colleges went fifty years ago: except for the close personal associations of college life, high-school graduates of to-day are getting a better and more serviceable education than was furnished for any of their grandfathers.

234. Endowed Universities and Technical Schools.

English university education, since its foundation nearly a thousand years ago, has been the function of private chartered institutions such as Oxford and Cambridge. In America the state governments incorporate colleges, give them authority to confer degrees, aid them with tax exemptions and often with money gifts, and support many of them. By tradition, the organization of a university includes a college, or academic, department leading up to the degree of A.B. Upon or alongside the college department have grown up professional schools, offering the M.D. in medicine, LL.B. in law, B.D. in theology, and Ph.D. for graduate work, together with a B.S. in an undergraduate technical or scientific school; in some cases there are also special schools of dentistry, finance, forestry, music, art, agriculture, veterinary medicine, and other subjects. The professional schools often exist separately, but the strongest ones are now parts of some university. Many whimsical degrees are conferred by poor colleges, as M.W., "Maid of Wax Works," and B.S.D., "Bachelor of Scientific Didactics."

The administrative organization of such institutions shows many types. Under most of them college presidents hold life positions of dignity, are much in the public eye, and become

great forces in public and social life. (1) The most common form is board government, in which trustees are the motive force, the president serving as an executive to carry out the directions of the board. (2) In faculty government, — the German method, — the actual teachers make appointments to vacancies; it is infrequent in America except in medical schools. (3) A third type, now steadily gaining ground, is presidential government, in which the president initiates educational changes and makes appointments (usually with the confirmation of some board), and exercises strong influence over the financial management. This responsibility tends to keep the various parts of a university in harmonious relation, and makes possible a systematic plan of education.

Technical education has been of much later growth than collegiate: only one of the large technical schools, the Rensselaer Polytechnic of Troy, was founded earlier than 1839. Although intended to prepare engineers, chemists, geologists, and other masters of applied science, some of these schools have liberal courses, including modern languages, history, and economics, and furnish good all-round training.

The "Report of the Commissioner of Education" for 1899–1900 enumerates about 460 private universities, colleges, and technical schools, with an enrolment of 47,000 men and 30,000 women, a total of 77,000, — besides about 40,000 in public institutions. The number of degrees conferred in course was 16,000; of honorary degrees, 700. These institutions, however, are of every variety of size and resources: 22 so-called "colleges" reported less than ten students each, and about 270 of them had less than a hundred each; the largest institution had more students than the hundred smallest taken together. The Mountain Home College, for instance, had a faculty of one man and two women, while the Columbia teaching force was 350 men and no women; New Windsor, Maryland, had a total income of $1,800, the University of Chicago $1,600,000; the library of Kansas City University had 500 volumes and was worth $500, the library of Harvard

University had 550,000 volumes and 430,000 pamphlets; the productive funds of Greenville and Tusculum College were $2,205, of Leland Stanford Junior University, over $18,000,000.

In every state except California, institutions of learning have partial or complete exemption from taxation, on the well-grounded theory that they are performing a public service and are often relieving the state of part of the expense of public education. In Maine the state pays to the localities a sum intended to reimburse them for the responsibility of protecting college property.

A special form of endowment is the creation of large funds, the income to be used, not for buildings, but for keeping up schools in poor communities or among depressed races. George Peabody, a London banker, born in Danvers, Massachusetts, gave $3,500,000 as a fund for the education of negroes, and the income has been spent chiefly in keeping up schools in the South. The Slater fund of $1,000,000 has been used for the same purpose. Some of the missionary societies maintain schools and even colleges, especially among the negroes, poor whites, and western frontiersmen. In 1901 Andrew Carnegie created a fund of $10,000,000, to be used by a board of trustees in furthering scientific investigation and research. Some of the great scientific and historical societies offer prizes for discoveries, or for good books, in their fields; these funds, properly managed, are flexible, and accomplish results not easily reached by fixed institutions.

235. State Universities.

During the last quarter century, only two very large and wealthy universities have been founded by private benefactors, — the University of Chicago and Leland Stanford Junior University; while a dozen important centres of national education have grown up under the care of the states. In the Western and Northwestern states, the principle of public education has advanced to the point that every young man and

woman who can pay the necessary expense of living shall be furnished with university instruction free of tuition.

The finances of state universities depend upon state grants, with some fees, for these institutions have little income from tuitions or endowments. The earliest state universities, in North Carolina and Virginia, have always depended upon state taxation. In some of the states the agricultural land grants of 1862 were turned over to private institutions: thus Cornell got the New York grant. In other instances separate agricultural colleges were established, as in North Carolina and the state of Washington. In other states the proceeds of the land grants were applied to the existing state universities: thus the large and prosperous universities of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, and California got the means to expand and to build up professional schools. Hardly any private institutions have such incomes: in 1900 the University of Michigan received $300,000 from the state; the University of Nebraska, $192,000; Ohio State University, $167,000; the University of Wisconsin, $268,000. A few states have set apart permanent tax funds for the support of the universities.

The state universities all have certain general characteristics. They demand little or no tuition from the residents of the states; yet many of them have so many outside attendants that comfortable sums are added to the incomes. Every one of the great state universities, in both undergraduate departments and professional schools, is open to women in the same manner and on the same terms as to men. The state universities pay great attention to the local industries: in the grazing states there are dairy schools; in the mineral states, mining schools; and in many states a large part of the high-school teachers are graduates of the state universities. In some states, notably Michigan, Wisconsin, Minnesota, Nebraska, and California, the universities are in organic relation with the lower and higher public schools, and have few or no rivals within the state limits.

With the state universities should be classed the separate state agricultural colleges and experiment stations. The United States government appropriates $25,000 a year for each agricultural college, and $15,000 for each experiment station (the purpose of which is to study plants, seeds, and methods of tillage suitable for the local conditions), — a total federal expenditure of $1,875,000. The agricultural colleges are, however, not successful in attracting men who expect to be farmers; in most states they tend to become technical schools furnishing a general scientific education.

Public education is one of the largest expense bills of American governments. The United States expends for this purpose about $3,000,000 annually; the states about $44,000,000; the localities about $184,000,000. This total of $231,000,000 is about $15 per capita for the enrolled school children, or $3.50 per capita of the population.

236. Religious and Moral Training of Youth.

One of the functions of the Christian church has always been the education of the young, and in most European countries religious instruction is a part of the public-school curriculum. In Germany, for instance, the Catholic priest, the Protestant pastor, and the Jewish rabbi come in turn into the school buildings to instruct the children of their parishioners. Many of the private schools and colleges in the United States give special instruction in Bible study and morals.

When, about 1840, the states for the first time faced the problem of a thorough public-school system, religious instruction was not included, because there were too many denominations in the community, and because it was thought contrary to the principle of religious freedom for the state to inculcate any religious doctrine. The Catholic church has always been especially strong against the teaching of any form of Protestant faith in the public schools; and the Protestant denominations have been equally firm against permitting the Catholic clergy to

have any official connection with the schools. The place has been to a large degree filled by the Sunday School, in which there were 11,000,000 scholars in 1901. Here each denomination is free to teach the children who come to it voluntarily; and in these schools children learn both the text and the moral lessons of Scripture.

It is, nevertheless, very common throughout the United States to begin the day's school exercises with the reading of a few verses from the Bible and a few words of prayer. This practice has given rise to many violent discussions. The Catholic clergy usually take the ground that the reading of the Protestant version of the Scriptures without comment is practically the teaching of Protestantism; and in some cities the school boards have forbidden this use of the Bible. The prohibition does not make the schools more acceptable to either the Catholics or the Lutherans.

The withdrawal of hundreds of thousands of children into parochial schools is unfortunate because the public school is the greatest democratic influence in our country. It planes down those differences of race and language which tend to divide Americans; for children are susceptible to ridicule and try to learn the language and acquire the habits of native children. It also makes the different social strata acquainted with each other's needs and powers.

237. Public Libraries and Museums.

Public education does not stop with schools and colleges; one of the most encouraging things in America is the development of libraries. Nearly every European government has established a great national library, such as the British Museum. For the new Library of Congress, the United States has provided a superb building in Washington, and spends about $600,000 a year for increase, cataloguing, maintenance, and administration. Most of the states have libraries in their capitol buildings for the use of legislators and other public servants; and a few of them are serviceable to schools.

The last forty years have seen a great development of civic libraries, not only in the large cities, but in the smaller towns and even in villages and country places. In many instances the buildings have been the gifts of public-spirited individuals; but the books are usually bought, and the libraries administered, from public taxation. The commissioner of education enumerates 5,400 public, society, and school libraries, of which 4,000 have more than 1,000 volumes each. In the state of Massachusetts every city, and every country town except seven, has a free library. The city of Boston has spent about $2,500,000 on library buildings, and the city of New York is about to spend $5,000,000 for a similar purpose. Cincinnati, Providence, Buffalo, Chicago, Minneapolis, and many other places have well-appointed buildings and increasing libraries. The annual drawings of books in the San Francisco Public Library are over 700,000.

The effect of the free libraries is not only to keep up reading habits, but also to furnish a means of extending the work of high schools. Many libraries publish annotated bibliographies and finding-lists, intended to make easy the discovery of really good books. In the large cities, branch libraries are established; and in some of the states, particularly Wisconsin and New York, public travelling libraries are sent from one country town to another, furnishing a practical means of education.

The main difficulty with the library system is that too much money commonly goes into buildings, while the book-buying funds are almost always too small. A necessary part of library expense is cataloguing; and the Library of Congress now offers to send printed transcripts of its own library cards wherever desired, in order to save this duplication of energy.

Several of the large cities possess museums of art, most of them founded by private gifts and carried on for the public benefit by private trustees. In a few cases, however, — as the Field Columbian Museum in Chicago, — the city is the owner and maintains the plant; and this system is likely to extend.

The United States keeps up several museums in Washington. Several cities, notably New York and Chicago, keep collections of wild animals for the instruction and entertainment of the people. In France and Germany, municipalities build and subsidize theatres as a part of public instruction. No American city has ever undertaken this task, but free band-concerts are common.

Free lecture courses have been established with great success in New York City, and have proved a means of educating those adults and children who have not the opportunity to go to school. Night schools taught as a part of the public schools have also helped to educate a busy class. Training in decorative art is likely to be taken up as a branch of commercial education.

238. Problems of Education.

American education is still in a formative stage, and the public has happily become aware that our schools are not perfect. (1) The main defect is a clumsy system of school administration, based on the mistaken idea that any intelligent person can decide intricate questions of education. In many small communities the schools progress because the intelligent men and women of the place put their minds upon the subject; but as cities grow larger it becomes more and more difficult to carry on the schools simply by the force of public interest. The school boards are almost everywhere too large, too changeable, and too much addicted to the pernicious method of executive sub-committees. The building and the care of schoolhouses are often put into the hands of still another city authority, so that janitors of schoolhouses sometimes snap their fingers at teachers, superintendents, and school boards.

(2) School boards go too far into technical details. The particulars of school organization have to be worked out by actual teachers and educational administrators, just as the minutiæ of railroad freight service must be settled by actual

railroad men. From personal experience on a city school board, the writer concludes that such a board ought to confine itself to general questions, such as the introduction of new branches of study, the creation of new types of schools, the enlargement of public kindergartens and manual-training schools, the establishment of methods for ascertaining the fitness of teachers. To experts should be committed such details as the arrangement of courses, studies, the building of schoolhouses, school furniture, text-books, and all the other paraphernalia of schools.

(3) The next necessity of the schools is trained teachers, especially in the country schools. The American district-school system has given opportunity for earning money to thousands of worthy young men and women who were on their way to other pursuits; but this changing and rather haphazard teaching has often been at the expense of the pupils. In every state it ought to be a principle that no person shall be appointed to a high-school position who has not a college education, or the equivalent; and that no person shall be appointed to the grades who has not had a normal training, or the equivalent. With this presumption of fitness, teachers ought to be appointed by superintendents or supervisors (the Cleveland system of appointment without confirmation by the board works well) for a time on probation; and then, if their work is satisfactory, they ought to have appointments during good behavior; there should then be an opportunity of promotion to the higher grades for superior work, and a slow annual increase of salary up to a maximum. Thus protected from removal for political reasons, and conscious of an adequate training, the good teacher has every incentive to do his best. As in other branches of the civil service, however, a fixed tenure of office often leads to indifference; and the best teacher will grow old: hence there ought to be a system of retiring allowances, so that a faithful teacher who has passed the point of efficiency may neither be turned out to starve nor retained when a fresher and more vigorous teacher might come in.

In the American schools a large proportion of the teachers are women, whereas in Germany and England the greater number are men. In many ways women make the better teachers, because they are patient, conscientious, and have a high feeling of responsibility. In many cities women are appointed to the headships of schools on the same salaries as those allowed to men for similar services. Women, however, are seldom made principals of high schools, and are heads of only four of the thirteen large separate women's colleges.

(4) The relation between the various strata of schools has now become very important. The grades commonly lead straight up to the high schools; but outside the few states which have an articulated system, — such as Wisconsin and California, — there is a break between the secondary schools and the colleges. The large colleges are each fed by more than a hundred schools, and the same school is sometimes preparing young people for a dozen different colleges. Two different attempts are now making to get rid of this difficulty. The first is by the widely-used certificate system, under which the college examines the method of instruction in the school; and, if satisfied, admits graduates to the college on probation without examination. The other method is to bring the colleges to agree on a common basis of entrance requirements, so that the examination papers of a group of colleges shall all be the same and shall be administered by a common board.

(5) Another necessity of education is a common understanding among teachers of every grade and specialty. This important purpose is reached by associations of teachers grouped geographically, or grouped by interest in a common subject. Most influential is the National Educational Association, which has about 10,000 members, and meets in an annual convention lasting several days. From this Association have proceeded several important investigations into the conditions and needs of American education: it forms a kind of clearing-house for the educators of the country.

Upon the whole, the tendency of American schools of every grade is toward constant improvement, especially in the selection and training of teachers. In few cities now can teachers find employment who have not had either normal courses or experience in other schools; and in general they are a conscientious, hard-working, and underpaid body of public servants.

CHAPTER XXIX.

RELIGION AND PUBLIC MORALS.

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240. History of American Churches.

At the time of colonization, the three religious forces in England were the Anglican Episcopal church, the Roman Catholic church, and various bodies of separatists and non-conformists.

All these elements were represented in the colonies: Virginia and the Carolinas established the Church of England; in Maryland, Catholics were tolerated from the first; the settlers at Plymouth were outright separatists; and the Massachusetts people, at first Puritans in the Church of England, speedily set up separatist churches, called Congregational. Another separatist element was the Presbyterian (substantially the same as the Dutch Calvinist), early introduced into the Middle and Southern colonies. In New Jersey, Pennsylvania, and many other colonies settled the Quakers, radical separatists; and in Rhode Island, the then very unpopular Anabaptists, commonly known as Baptists. In Pennsylvania and elsewhere settled German Protestants, especially Moravians; and there were a few Jewish synagogues in the colonies. In the eighteenth century the Methodist church arose as another separatist body, and under the preaching of Whitefield and Wesley it gained ground in America.

Of these churches, the Episcopal was supported by public taxation in Virginia and elsewhere, as was the Congregational in Massachusetts and Connecticut. At the time of the Revolution the Southern church establishments were broken up by state constitutions, and fifty years later they ceased in the New England states. In 1789 the first Catholic bishop was designated, and in 1784 the first Episcopal bishop. About 1788 the Methodists and Baptists formed national organizations; and in 1789 the Presbyterians organized a national "General Assembly."

From these parent denominations have sprung many lateral churches. Two were split from top to bottom: the Methodist church divided on slavery in 1844, and has never reunited; the Presbyterian church separated into Old School and New School in 1837 on doctrinal grounds, and both Old School and New School split when secession came about in 1861, making for a time four national Presbyterian churches, which have since reunited. On the other hand, many new elements

have appeared, such as the Greek Catholics and the Christian Scientists.

The result is that the census of 1890 enumerates seventy-five denominations, grouped, in general, in many cases national, organizations. At present the tendency is for the great churches to keep up friendly relations with each other, while holding to their separate organizations. Each denomination tries to maintain schools, colleges, newspapers, and publishing houses of its own, and also to sustain separate home and foreign missions. The only important church in America which is an organized part of a mundane religious organization is the Catholic, the higher clergy of which are appointed from Rome and participate in the ecumenical council.

241. Government and Churches.

In the eyes of the federal government and of nearly all the state, territorial, and local governments, the churches are simply voluntary associations, on the same footing as social clubs. By the First Amendment to the constitution, the United States is prohibited from making any "law respecting an establishment of religion or prohibiting the free exercise thereof;" which means that the federal government cannot appropriate money for the support of any church, or compel any person to worship in any form. A later movement to secure a constitutional amendment recognizing the existence of God has died out, perhaps because people think that God is not dependent upon a constitutional amendment for His existence.

The state governments are under no restriction against the support of religion; in fact, the constitutions of New Hampshire and Massachusetts for many years expressly required the legislatures to pass laws compelling the towns to maintain Protestant teachers of piety, religion, and morality; and the legislature of Georgia down to 1831 made repeated grants of land to Baptist, Methodist, and Presbyterian churches. Most state constitutions, however, especially of the later period, absolutely prohibit the

support of state churches. Several states refuse to accept the testimony of atheists, and some of them have made a belief in God a nominal condition for the suffrage or for holding public office.

The local governments are under the restrictions of the state constitutions; but in some cities large appropriations are made to denominational charitable institutions, particularly to those of the Catholic church, on the theory that the money thus given saves the necessity of a like expenditure by public officials.

A widely-prevailing method of assistance to religious bodies is to relieve them from taxation upon their property. In many states this is a constitutional relief, and extends to all the property of ecclesiastical corporations, including convents, schools, and asylums, as well as to church buildings. For instance, Trinity Church, Episcopal, in New York City, is the owner of real estate worth millions of dollars, the rentals of which are applied to charitable purposes free of tax. In a few states — New Hampshire, for example — church property above a certain value is taxable, so as to discourage the accumulation of large holdings of real estate in dead-hand. The far-reaching effect of tax exemption is seen when we consider that in 1890 the Methodist-Episcopal church alone had $114,000,000 worth of real estate, the Episcopal church $83,000,000, and the religious bodies of the United States taken together about $700,000,000.

Wherever the United States has acquired territory, it has allowed the preëxisting churches to retain their property, but no longer to receive support out of the treasury. The question was not serious in Louisiana or Florida; but it has been perplexing in the Philippines, where religious worship has for centuries been sustained by taxation, especially since the title to many of the churches is vested in friars unpopular with the people. In the territory of Utah, from 1850 to 1887, trouble arose because the local territorial government created a religious corporation which held for one of its religious tenets the practice of

polygamy. In 1887 Congress passed a statute dissolving the Church of Jesus Christ of Latter Day Saints, distributing its property for public education, and making the practice of polygamy a crime; and, when the state of Utah was admitted in 1896, it was obliged to insert in its constitution an express prohibition of polygamy.

Cases often arise in which the national or state courts must take cognizance of religious doctrine. If a dispute comes up within a religious body, and two parties claim each to be the orthodox and legal church, the courts decide, not which party has the proper religious belief, but which under the rules of its own church is entitled to control the property. The split in the Congregational churches of New England about 1810 caused many such suits between Unitarian and Orthodox congregations.

242. Religious Denominations.

An interesting field of inquiry is the relative strength of the various denominations; but a comparison is hard to make, because the same terms do not mean the same thing everywhere. Thus, among the Catholics all persons, young and old, above about fourteen years of age are counted church members; in the Methodist church some children are admitted to membership; the Unitarian church practically admits only adults. According to the latest available statistics, those of 1902, the Catholic church has about 9,100,000 members, most of whom are Irish, German, French, or Slav by birth or extraction. The seventeen kinds of Methodists include about 6,000,000 communicants. There are about 5,000,000 Baptists, distributed in thirteen sects, including the Regular, "Six-Principle," Seventh-Day, Freewill, Original Freewill, General, Separated, United Church of Christ, Primitive, and "Old Two-Seed-in-the-Spirit-Predestinarian" Baptists. Ten kinds of Presbyterians number 2,000,000, including three Reformed Churches and six Reformed Presbyterian. Nineteen bodies of Lutherans count 1,600,000; Disciples of Christ, 1,100,000;

Episcopalians, 700,000; Congregationalists, 600,000; Jews, 1,000,000; Christian Scientists, estimated at 1,000,000.

Among the smaller denominations or fractions of larger denominations are the United Zion's Children (River Brethren), of whom there are about 500; four different kinds of Plymouth Brethren; the Christadelphians, with sixty-three small churches; the Church of God (Winebrennerian); the Church Triumphant (Schweinfurth) and the Church Triumphant (Koreschan Ecclesia); the Adonai Shomo, a New England church of only 20 members in all; the Dunkards (four kinds, with over 100,000 members); four varieties of Friends or Quakers (the Orthodox, Hicksite, Wilburite, and Primitive); four churches of Friends of the Temple; twelve varieties of Mennonites, including the Amish, Old Amish, Defenceless, and Brethren in Christ; the Schwenkfeldians; the Salvation Army, with 40,000 adherents; and "The Holy Ghost and Us."

Arranged in the order of numbers, by far the most powerful of all the religious bodies is the Methodist church and its various ramifications, with 41,000 ministers, 55,000 church buildings, and from 12,000,000 to 15,000,000 adherents; more than two-thirds of all the Methodist sects are included in the two Northern and Southern regular Methodist-Episcopal churches. Next come the Baptists, with 36,000 ministers, 50,000 churches, and 10,000,000 to 12,000,000 adherents. The third great group is the Catholic, with 12,000 clergy, 12,000 churches, and 9,000,000 to 10,000,000 adherents. Next are the Presbyterians, with 14,000 ministers, 17,000 churches, and 4,000,000 to 5,000,000 adherents; next the Lutherans, with 3,000,000 to 4,000,000 adherents; next, and about equal in numbers, are the Disciples, Episcopalians, and Jews; and next to them the Congregationalists, with 6,000 ministers, 6,000 churches, and 1,500,000 adherents; next, probably, the Christian Scientists.

The organization of the churches differs widely. The Catholic church has no national assemblies of either the clergy or

the laity, but a highly-centralized hierarchy leading up to the ultimate spiritual authority of the pope as the vice-regent of God and the head of the whole Catholic church. The Episcopal church has in each state a bishop or bishops, and in each diocese a diocesan convention of bishops and lay representatives; the final authority is the national triennial convention; within each state the bishops are chosen by the diocesan convention, and confirmed by the body of bishops. The Presbyterian church has an elaborate system of conferences and state synods, and a "General Assembly," which has the power to lay down a basis of doctrine for every church and minister. In the Methodist church there are bishops, conferences, and a general conference which elects bishops and is the highest authority in the church. The Congregational and Baptist churches have systems of local government, each church calling its own ministers and laying down its doctrine; but there is also a system of general councils for conference and the care of common affairs. The coming in of emigrants from Eastern Europe has introduced many congregations of the Greek Catholic church, which are subject to the metropolitan (prelate) of Greece, of Constantinople, or of Russia.

In a few cases, several denominations use the same church; but commonly each wishes a separate building, and it is almost impossible to keep up union churches. Hence in many small villages, two, three, or half a dozen little churches may be found, each with a little congregation and a poorly-paid minister.

243. Public Morals.

The question of public morals was simple enough so long as church and state were identical: what the church forbade was commonly punishable by the civil authorities, or by penalties of excommunication, which were even worse. In colonial days, governments habitually followed up the good people with all sorts of minute regulations: the early New England statutes refer for authority to the books of Moses; the cut of garments,

the character of entertainments, were subjects of petty enactment; failure to go to church was a misdemeanor punishable by the county court.

Notwithstanding the disestablishment of the churches between 1775 and 1835, the state governments continued to pass laws for the punishment of some acts contrary to ordinary religious belief: for instance, many states still have obsolete statutes against profane swearing and concerning the observance of the Sabbath. Most states protect religious services from disturbances caused by music or other loud sounds; and the closing of liquor saloons on Sunday is effectual in many New England communities, and is attempted in other populous states. In most states, places of business are expected to be closed on Sunday, though even in the strictest ones exception is made of drug stores, hotels, public restaurants, and of news-stands during a part of the day. Sunday amusements are nearly everywhere prohibited; but in some cities, in defiance of the law, theatres are open on that day and athletic games are carried on.

The protection of public morals also extends to the prohibition of gambling of every kind, including lotteries. Playing for money was the habitual amusement of polite society a century ago, and it has always been common upon the frontiers and in great cities. It is practically impossible for the law to reach people who agree to gamble in private houses; but the prohibition can be made effective against all places of public resort, and the business of gambling cannot flourish unless there is tolerably free access for the public. Formerly the great summer resorts were infested with gambling, but from most of them it has been driven out. It flourishes, however, in the cities, where the gamblers somehow manage to keep themselves from arrest.

In colonial times, the lottery was a frequent and respectable means of raising money. It was used even for building churches and college buildings; and George Washington was a regular purchaser of lottery tickets. Such lotteries, conducted in the

open, were as fair a form of gambling as could be devised; but of course, in order to leave anything for the promoters, the losses must have been much more than the winnings. The spirit of unrest and speculation resulting from lotteries was so great, and the tendency against saving so strong, that lotteries of every kind have been forbidden by every state in the Union, and by Congress for the exclusive jurisdiction of the United States. The people of Louisiana, in 1892, refused a bribe of $1,250,000 a year rather than allow the system to go on. The United States renders great service through its postal laws; for it refuses to transmit lottery mail even from foreign countries, and its agents make every effort to discover lotteries which are carrying on business surreptitiously.

The keeping of houses of prostitution is everywhere strictly forbidden, and yet they exist in every considerable community. Why is it so difficult to stamp out gambling-houses and other illegal places? One reason is the difficulty of getting evidence, since those who frequent such places are the last to wish a prosecution. Another is the rift which exists between the upper and lower classes of society, so that one section of a city knows little and cares less about what goes on in another section. Another trouble in some unhappy cities is the inefficiency of the police force, which for various reasons fails to see or to remedy conditions with which it is perfectly familiar.

CHAPTER XXX.

PUBLIC ORDER.

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245. Crime and Punishment.

Just as the proper working of national, state, or local government depends upon the faithfulness of the persons who hold office, so the carrying out of the functions of government which directly affect individuals depends upon the obedience and good order of the citizens. When the laws are broken, what is the remedy? The most obvious is the prosecution, conviction, and punishment of the wrong-doer. In the United States the three forms of legal punishment are fine, imprisonment, and punishment of the body. (1) Fines are never large, a few thousand dollars at the most; they are commonly applied to delinquent officers of corporations, or in small sums to petty offenders.

(2) The most common punishment for the conviction of crime is imprisonment; but the humanitarian spirit of to-day has made the prisons very different from what they were seventy-five years ago — dirty, unwholesome, fever-stricken dens, infested with vermin, a punishment even to enter them. The modern theory of prison discipline is not only to put a penalty on wrong-doing and to keep the wrong-doer out of the way of mischief, but also to give him opportunity for reflection and reformation. Hence convicts are often taught trades, and employed in useful labor; if they behave well in prison and give no trouble to the officers, their sentences are shortened by about one fourth; they have proper food, and in most cases dry and healthful cells. Even then, to a thinking man it is a terrible punishment to be secluded from his friends, cut off from movement, set apart among felons, and deprived of years of fruition.

(3) Corporal penalties have not entirely passed out of American jurisprudence. Whipping is a legal form of punishment in some reformatories and prisons in Delaware, inflicted chiefly

for petty crimes; and the worst Southern prison systems are very like the badly-managed plantations in slavery time. The death penalty has been abolished in five states of the Union, but is inflicted in all the others, and also under United States law. In some states an electric shock is substituted for the old-time hanging. Notwithstanding a strong movement to do away with the death penalty altogether, it is retained in many of the old communities from the belief that it is a restraint on murder; yet many juries acquit prisoners of murder because they do not like to be connected with putting fellow-men to death. On the other hand, in states which passively permit lynching, the abolition of the death penalty would give an excuse, now lacking, for the shocking torture and barbarism of unlawful executions by excited men.

246. Charities and Corrections.

Upon the various forms of American government falls the responsibility of providing for the weaker members of society. In colonial times, it was practically recognized that the community was bound to keep all its citizens from starvation, and that the local governments were to provide for their own poor. The growth of civilization, almost unrestricted immigration, the rise of great cities, have multiplied the poor; and at the same time a growing humanitarian spirit has added to the sense of public responsibility. Throughout the United States, therefore, almost every class of dependent and helpless persons is looked after by the state.

First come the poor, who are cared for in one or all of three different ways: (1) in-door relief, which means a distribution of supplies, and sometimes of money, at the houses of the poor; (2) out-door relief, in which the applicants for aid present themselves at the office of an official appointed for that purpose; (3) the poor-house, or alms-house, for those who cannot possibly keep up homes of their own.

All these methods have their disadvantages: in-door relief

creates habits of pauperism ; the poor-house is almost always joyless, and sometimes cruel. The whole problem is much complicated by the large number of charitable societies and individuals, some of whom give indiscriminately and some have regular pensioners : cases are not unknown in which a pauper family draws an annual stipend from each of three or four different organizations, and lives in comfort. The most effective means of dealing with the problem of poverty is the Associated Charities, an organization existing in most cities for the purpose of registering and examining all applications for aid, so as to deter the worthless and to prevent duplication of effort for the worthy ; and, further, to help families to become self-sustaining.

By degrees the state has taken upon itself the problem of the defective classes. First, the insane, who until about 1830 were habitually treated with a disregard of humanity which almost surpasses belief. It was the work of one woman, Dorothea Dix, to arouse public sentiment in the United States on this subject, by insisting that public hospitals be established for the cure of the curable and the custody of the incurable, who in many cases are still relegated to county poor-houses. The state of New York has recently assumed the care of all the insane within its borders, a step which ought to be taken in every state. This humane reform includes the right to public supervision of all private insane asylums ; and the manner of commitment of persons supposed to be insane is carefully regulated by statute.

The blind, the deaf and dumb, and the idiots have also been made state wards by most of the states, so that they receive education, and sometimes support, at public expense. The ground for this care is, first, to lessen the suffering and deprivation of such persons ; and, secondly, to enable them to render such services to the community as their conditions allow.

Among the last to engage the attention of the public has been the most helpless class of all, the little children. The care of orphans has for many years ordinarily been assumed by private

charitable institutions, which have taken little children and sometimes kept them twenty years. Institution life is unfavorable to moral development, and institution children are often helpless when they get out into the world. To meet this need, has been devised the method of gathering up friendless children in order that they may be distributed among childless families.

The child-saving work is conjoined with other movements for the prevention of crime at its fountain-head, by caring for boys and girls who lack home influences and home restraints, so as to prevent the building-up of the lawless, hoodlum type, which is so dangerous in cities. Until within a few years the boy charged with a petty crime was likely to be sent to jail, where he fell in with hardened criminals. Now, in a few states children are brought before juvenile courts held, if possible, away from the regular court-houses; and, if they have not parents who are fit to take care of them, they are sent to some institution, or turned over to a Children's Aid Society, which will try to find them homes.

A part of the same uplifting idea, now adopted in several states, is the reform of the prison system by indeterminate sentences, under which a man who is imprisoned for the first time and who behaves well is released after a short detention and given an opportunity to reform. If he falls back into evil courses, he may be re-arrested under the original sentence without a second trial; but, if he goes on well, when the maximum term has expired he is a free and a saved man.

The various public correctional and charitable institutions in a single state may be as many as twenty in number, besides county institutions. The ordinary type of single institution government is an executive board, commonly of people living in the neighborhood of the institution. This method lacks proper state supervision; and therefore, in about half the states of the Union, boards of correction and charity have been appointed, some with executive power, some with the right to visit, report, and require uniform accounts. The state chari-

table and correctional officials have a lively "National Conference of Charities and Corrections," which meets annually and publishes an elaborate report.

The extent of public charity of every kind is to some degree measured by the expense. In 1890 the total amount spent by the forty-four state governments for the defective, criminal, and poor was about $21,400,000; the local expenditures were about $30,400,000. In prosperous Massachusetts, 11,300 of the population received public aid in some form.

247. Regulation of the Liquor Traffic.

The increasing use of alcoholic liquors causes uneasiness to most civilized governments, and is almost everywhere subject to some restrictions. How do American governments regulate the traffic? The English and Colonial method was to lay a revenue duty on the importation and manufacture of fermented and distilled liquors; and to regulate inns and drinking-houses, simply with a view to public order. Until about 1830 the use of liquor was treated by the United States like the use of tobacco, — as a convenient subject for tax because so many people liked it. Then arose the Washingtonian Societies, the first "temperance" organizations, which urged moderation in drinking. Soon after came societies for total abstinence.

Various ways of dealing with the question have been tried, (1) In 1851 the opposition to the use of liquors reached such a point that Maine evolved a drastic method of regulation, — namely, the absolute prohibition by law of the manufacture, sale, or use of any form of malt or spirituous liquors within the commonwealth. The movement has spread widely through the Union: Maine, Kansas, and North Dakota have constitutional prohibition; Rhode Island and South Dakota have once had but later abandoned such a provision.

(2) In several states the sale was prohibited by statute, as in New Hampshire from 1855 to 1903, Iowa from 1884 to 1894, Massachusetts from 1869 to 1875, and Vermont from 1852 to

1903. In most of the prohibition states, however, breweries and distilleries exist and are steadily at work, and liquor is openly sold in every city; for it is almost impossible to get evidence against a liquor-seller without employing a "spotter," who shall purchase and himself taste the beverage so as to swear to its character; and in many places juries will not convict on that evidence, or on any other. Then, too, some means must be provided for the sale of liquor for medicinal purposes, and this leads to underhand sale by druggists. Upon the whole, the prohibitory laws do not in the long run prevent the sale of liquor, although they set upon it the stamp of public disapprobation and put it in the power of any community so disposed to relieve itself of the business.

(3) Another method of dealing with the liquor traffic is simply to let it alone, except for the small federal tax. In a few states the liquor business is treated like any other pursuit, except that there are laws against selling liquor to known drunkards, to minors, or to persons already intoxicated.

(4) Local option means that any town or city which so votes shall be entitled to the machinery of local and state government to prevent the sale of liquor. Under such an arrangement, a thirsty man may seek satisfaction in some near-by town which permits the sale; but the system greatly lessens the amount of liquor sold, increases savings, and keeps growing children and youth from a first-hand acquaintance with the saloon.

(5) License, which in the United States tends toward high license, has two merits, — that those who pay for license are interested to prevent kitchen bar-rooms; and that as licenses grow more expensive the number of drinking-places decreases. It is also very productive: in the state of New York the license fees amount to $13,000,000 a year. The objection most commonly brought is that license makes the state a partner in a demoralizing traffic, and helps to make the business of liquor-selling respectable.

(6) Another method, which was tried in some of the Western

states with no success, was to make the saloon-keeper, or even the owner of the building, responsible for loss of wages and neglect of family on the part of a man who drew his supplies from the saloon. It was found difficult to establish the ownership of the property and to get conviction on any evidence.

(7) Another unusual liquor law is the South Carolina state-account system described above. The system is a modification of the Norwegian, or Gothenburg, system, by which the number of drinking-places is greatly reduced, and the business is managed by the most public-spirited men in the community, who try to sell as little as possible.

Of all these systems, that which results in the greatest peace and quiet within the state is the local-option system combined with high license. The conditions of the whole problem do not readily appear upon the surface. In the large cities most of the saloons are owned by the great breweries, which furnish the capital, pay for licenses, and defend suits. The prosecution of a liquor case is a difficult and thankless task, for evidence is hard to get, is discredited in advance, appeals are numerous, and juries difficult to convince. Any attempt seriously to diminish the amount of liquor manufactured and sold is resisted by powerful vested interests, and at the same time is hampered by the fact that in few communities do the majority of the voters really feel a moral reprobation for the purchaser of liquor.

248. Public Health.

For the protection of the public, the sanitary conditions of the country must be regulated by law. During the last hundred years the human race has come to realize that dirt and foul air are two of the most destructive disease promoters. Cleanliness of person, clothing, and house is the ordinary condition of civilization (even Homer observed that young men always wanted clean linen when they went to a dance); and the abundant supply of water in most American cities greatly contributes to cleanliness, and hence to health. Where filth is persistent,

the local authorities under state laws have the right to close up houses and other buildings, and even to condemn them and tear them down.

A force always working against public cleanliness is the soft-coal smoke which defaces nearly all Western cities, and adds millions of dollars a year to the cost of living, by the unnecessary fouling or destruction of clothing, fabrics, and buildings. An influence more dangerous to health is the foul and disease-breeding dust from unpaved or poorly-paved streets, especially in the poorer quarters.

All our largest cities except three have public sewers, by which refuse is easily and immediately carried away to a distance from crowded population. New Orleans has still some private sewers, for the use of which the people are charged. The combination of abundant water and sufficient sewerage has reduced the death rate of modern cities by about one half, and has correspondingly raised the productive capacity of the country.

The power of the state to deal with disease extends to recognized means of prevention: thus, many states have laws compelling people to be vaccinated; houses in which contagious diseases exist are marked with flags; the inmates may be quarantined in their own houses; and the sick and the suspected may be carried by public authority to hospitals. The power over health and safety to life extends to laws for regulating buildings. In most cities, a specified area of every lot devoted to tenement-houses must be reserved for light and air, and all buildings must have proper sanitary drainage.

The federal government in its general regulation of interstate and foreign commerce may take precautions to prevent the spread of disease. It created a short-lived "National Board of Health" in 1879; but now this authority is exerted primarily by the states, which in each port provide a health officer and assistants, who examine vessels. Under the laws of the United States, immigrants afflicted with contagious diseases are to be

returned to the countries from which they came; even consumption has been held to be a disease which would warrant sending the sick person back.

The people of the states take their own precautions against contagion from other states. In repeated instances, people flying to escape yellow fever and like diseases have been stopped by armed mobs and compelled to return or to stay in refugee camps. The fortunate discovery that yellow fever is communicated, not by personal contact, but by mosquitoes, will probably end this insensate and irregular method. Hospitals, built and supported in whole or in part by the national government or by state or local governments, are to be found everywhere in the United States, and thousands of poor people receive treatment free of charge. Some cities have also free district physicians and dispensaries.

249. Fire Protection and Light.

A public service of great cost and much importance is the protection from fire. From the earliest colonial days, wooden houses and villages have been subject to fires, and the only means of fighting them was to pass buckets from hand to hand. About the time of the Revolution, in the larger places hand fire-engines, which were nothing but pumps on wheels, were provided; a little later sprang up organized volunteer fire companies, the members of which ran to their engine-houses on an alarm and dragged out their engines. These companies were very disorderly, much involved in politics, and not infrequently stopped fighting the fire in order to fight each other. Fire-insurance companies, which sprang up about the time of the Revolution, divided, but did not diminish, the loss. About 1860 began the construction of powerful steam fire-engines, which required skilled men and proper housing; and slowly there grew up a system of paid firemen, on duty in their engine-houses day and night. The introduction of the fire-alarm telegraph about 1870 simplified the giving of notice;

and now the routine is so perfected that within sixty seconds after the tap of the bell a powerful steam fire-engine, well manned, will dart out of an engine-house and start straight for the spot where the alarm was given.

In the great cities the system includes hose trucks, chemical engines, protection wagons (often supported by the insurance companies), and monster ladders and life-saving apparatus. The departments are arranged on a semi-military basis, with chiefs and sub-chiefs and a permanent force. The men are highly paid: the firemen in New York receive on an average the same salaries as the men teachers in the city. New York in 1902 spent $5,200,000 on its fire department, or $1.50 per head of the population.

The duty of fighting fire involves the right to prevent it: building laws prohibit the construction of wooden structures within fire limits; and there are strict laws for the construction of stairways, fire-escapes, and approaches to frequented buildings. The annual loss by fire in the United States is about $150,000,000. In the opinion of experts, proper building laws, which would little increase the cost of construction, would save seven eighths of this loss.

Somewhat akin to fire protection is public lighting; it is more than a convenience, for it makes possible safe circulation at night. Many cities permit gas and electric companies to lay their mains through the streets, and to supply both private consumers and the cities themselves; in many other cities the municipality owns the gas or electric-light works, and serves private consumers. In 1899 about 300 cities, including Detroit and Chicago, had municipal electric plants, and 12 cities had public gas works. The private companies have special privileges of using the streets, and furnish light to the city governments; hence they are subject to restrictions and investigations not usual in other corporations.

250. The Police Force.

For the serving of legal processes, the arrest of criminals, the maintenance of order, and the execution of many laws, a force of public servants clothed with the authority of government is necessary. This function rests wholly upon the states, which have delegated the greater part of it to the local governments. Most foreign countries have a system of centralized rural police, or gendarmerie; but no state in the Union has ever organized such a force, except that sometimes there is a special police to detect illegal sales of liquor.

The rural peace officer in America is commonly the constable, elected by popular vote and wholly inadequate for any emergency. In case of riot or of great public danger, men are often sworn in as special constables, a commission which gives them authority to make arrests and to resist attacks on persons or property. Some of the detective agencies undertake, in case of strikes, to furnish bodies of armed men sworn in as constables, and maintained at the expense of the owners of the property. This is very close to private war, and ought to be made unnecessary by proper state organization.

The colonial and later towns had paid watchmen, the germs of our modern police; and it was a favorite occupation of the gilded youth "to box the watch"— that is, to thrash the guardians of the peace. In 1857 was organized for New York City the first so-called "metropolitan" police, that is, a body of men with military organization, well paid, and steadily on duty; and all other cities and many smaller places have adopted this system. The police force of Greater New York numbers 7,700 men, and costs $11,300,000 annually. The police patrol the city by night and day, and have summary powers of arrest of criminals in the act, and even of suspicious characters; they very often, without warrants, arrest people for criminal acts which they have not seen, a practice which is strictly illegal. They also serve criminal processes, act for the health depart-

ment, sometimes take a census, and are the antennæ of the city government.

The police stations are headquarters for the force and for the police courts; they include prisons, which are simply branches of the state prison system, and often lodging-houses for the homeless poor. All these responsibilities give the police an authority which is usually exercised for the good of the community, but which has many times been shown to be capable of abuse.

251. Riots and Insurrections.

The continuance of government and of civilization depends upon the ability and the purpose of public officials to compel the observance of the laws, and to quell all irregular and violent attempts to secure even proper ends. The foundation of criminal law is the conception that the state, and not the person injured, is to take in hand the punishment of the culprit; the foundation of civil law is the conception that there is a pre-existing organization of impartial tribunals acting under legal principles, by which disputes may be settled without the use of force; the foundation of constitutional law is the practice of bringing about changes in government by methods prescribed in the form of government itself, — by peaceful discussion and by voting for candidates who will favor desired legislation.

The experience of mankind shows that in most highly-civilized communities there is a latent substratum of savage instincts, and that a considerable fraction of the population can be driven by prejudice or mere excitement to lawless destruction of lives and property. A great danger to society begins when men associate themselves, not simply to commit crimes, but to oppose lawful government. Such resistance may take any one of several different forms: (1) a mere mob, formed without preconcert, and anxious only for the sport of wrecking buildings and maiming and killing obnoxious people; (2) a riot, which is a more determined stand against the authority of the

public; (3) an insurrection, intended to prostrate the authority of the existing government; (4) a rebellion, which is a determined effort to overthrow the existing government and to substitute something else. The gradations from one to another of these forms of violence are impossible to trace: the riot to-day may be an insurrection to-morrow, and may turn into a rebellion the next day.

Such disorders were very common in England, which experienced two organized and successful rebellions, in 1643 and 1688. Every colony was accustomed to riots or insurrections, the most notable being the Bacon Rebellion in Virginia in 1676, the Leisler Rebellion in New York in 1690, the New Jersey Quitrent Riots about 1745, the Stamp Act Riots of 1765, the Regulator Riots in North Carolina in 1771, and the Boston Tea-Party in 1773.

The Revolution itself was full of riots, and its main purpose was through rebellion forcibly to destroy the existing government, so as to erect a better structure by a free people. As soon as state governments were established, they began to suffer from disorder: the Shays Rebellion of 1787 came near uprooting the government of Massachusetts. The most persistent effort to overthrow a state government thereafter was the so-called "Dorr Rebellion" in Rhode Island in 1843. Many riots and interferences with state governments grew out of the slavery contest, notably the Garrison Riot of 1836 and the John Brown Raid of 1859. Since the Civil War there have been fearful riots in Pittsburg (1877), in Cincinnati (1884), and in Chicago (1894), in all of which large amounts of private property were destroyed and many lives lost.

The ordinary method of preserving order is through the courts. A person believed to be guilty of riotous and disorderly action is subject to arrest on an ordinary court warrant, served by the sheriff or his deputy as agent of the court. In case of resistance to such arrest, the sheriff may swear in a large number of additional deputies, all of whom have authority

either to serve warrants or, like the ordinary policemen, to arrest persons whom they themselves see committing riotous acts. In case the deputies are not sufficient, the sheriff has the power of calling the *posse comitatus*, or power of the county; that is, he may summon all the able-bodied men within the jurisdiction of his court to assist him. The *posse* is a clumsy and undisciplined body, and in practice is used only to compel bystanders to take part with law and order.

A consequence of riots, and especially of insurrectionary acts, may be a prosecution for treason. A few cases of treason against a state have been tried, the most notable being that of John Brown, who in 1859 was executed on a charge of murder and of treason against Virginia. Treason against the United States is a perfectly well-recognized crime, defined in the constitution as "levying war" against the United States, or "adhering to their enemies, giving them aid and comfort." Nearly all the violent outbreaks against the United States have been followed by treason trials: men were convicted and sentenced to death for their share in the so-called "Whiskey" Rebellion in 1794 and the Fries Rebellion in 1799; Aaron Burr was unsuccessfully tried for treason in 1807; a man named Hoxie was tried in 1808; and there were several treason trials during the war of 1812. During the Civil War there were some cases; and one man, Dr. Milligan, was convicted of treason by a military commission and condemned to death. After the war the trial of Jefferson Davis for treason was allowed to break down on a technicality. All the men convicted in 1794 and 1799 were pardoned by the president, and Milligan's conviction was held by the Supreme Court to be invalid; so that in the whole history of the United States no person has ever suffered death as a traitor to the United States.

252. Suppression of Disorder.

The administrative function of keeping order is divided between the national and state governments, with some authority

in the local governments. The mayor of a city is usually held responsible for the protection of lives and property through the police; the county sheriff acts through his deputies; the governor of a state controls the militia; the president of the United States may call on the militia of any state, and also on the army and navy of the United States.

Warrants and prosecutions for acts already committed are entirely useless against a sudden riot or insurrection. When it is evident that the ordinary machinery of the courts is unavailing, it is usual for the mayor or the county sheriff to notify the governor and to ask for troops, — that is, for the state militia. Those who belong to the organization are legally compelled to turn out on the governor's call, either to fight the mob or to guard persons and property. Often the militia is unwilling to fire on its own townspeople; but sometimes regular street fights take place, and there have been cases in which the militia has been on duty for several weeks or months.

Where the militia is insufficient, under the constitution of the United States the state legislature or governor has a right to call for federal aid. In such cases the president may call out the militia of neighboring states; but the best dependence is the regular army, which has no personal affiliations with mobs and can be depended upon to obey orders exactly. In one of these three ways — by the officers of the courts, by militia under state authority, or by troops sent by the federal government on the call of a state — disorders directed against state governments can be speedily quelled.

Whenever the execution of the federal constitution or of a federal statute or a federal service (like the mails) is opposed, the direct power of the federal government may be invoked. The president may intervene on his own responsibility wherever, as is usually the case in railroad strikes, the carriage of the mails is interrupted, or wherever the prime object of the movement is to paralyze the execution of federal law. Many instances of such resistance have occurred. In 1794, in the

Whiskey Rebellion, a large part of the population of Southwestern Pennsylvania rose to prevent the collection of the excise on distilled liquor; they assaulted federal officials, plundered the mail, and killed one man. The president called out 15,000 militia, who put down the rebellion without firing a gun. In 1799, in the Fries Rebellion in Eastern Pennsylvania, opposition to the collection of a federal tax went to the length of a rising, which was easily suppressed. In 1806 Aaron Burr organized a desperate expedition against New Orleans. In 1808 there was violent resistance to the embargo, especially in Vermont. In 1856 the Mormons in Utah resisted the federal government till a considerable military force was sent out.

The Civil War was by far the most determined of all resistance to the United States: eleven states and parts of several others threw off their allegiance to the United States, and for four years carried on an armed contest. During the war, in 1863, there was a terrible draft riot in New York City, in which 1,000 people were either killed or wounded; and it was only put down by using the army. Since the war there has been very little opposition to the authority of the federal government, except the insurrection in the Philippines following the transfer of those islands by Spain, in 1899.

Among the interesting questions which have arisen in the process of enforcing order is whether United States troops may be called upon to act as a *posse comitatus*. The ordinary purpose of the *posse* is to protect legal officers in arresting persons previously charged with crime: the ordinary purpose of the army is to break up armed resistance by assailing any person who is a part of the insurrection, wherever found. Although after the Civil War, under authority of Congress, troops were frequently used as a *posse*, it is an unusual expedient, which creates as many difficulties as it settles.

Another question is whether troops may be called out without the request of a governor. This was practically settled by Washington in 1794, when he summoned militia to put down

the Whiskey Rebellion, acting against Governor Mifflin's protest. In 1861 President Lincoln used the same power; and in 1894 President Cleveland called out troops to put down the Chicago strikes without the desire of the governor of Illinois. In 1795 an act was passed authorizing the president to use his discretion in such cases; and in 1807, under the pressure of the Burr insurrection, the president was authorized to use federal troops and naval forces for the suppression of disorder.

253. Ultimate Defence of Society.

The most orderly governments are not by any means the freest. In all history, the ruin of republican government has been the good order maintained by a despot through troops which would obey him; and some of the American cities in which there is most quiet and least public protest are among the worst governed, because the people have not the spirit to demand honesty and public service.

The ordinary protections for civil government are three. (1) The ordinary guardians of the peace. The police in the cities, though not a perfect body of men, have a semi-military discipline, and can almost always be relied upon to stand against the mob which contemns their authority. In the open country the constables are not well organized; hence the large numbers of train robberies and like crimes, most of which could be prevented by a proper state police.

(2) The militia. Of late years in many large cities immense armories have been constructed, which are intended to be citadels and points of departure in case of civic disturbance.

(3) The regular army and navy, which, as the most highly-disciplined, is the most effective; and it can be used in states where governors fail to do their duty.

Behind all these arrays of men, the real defence of popular government is the determination of Americans that they will have honest and efficient public service. The way to have it is, first of all, to vote for it persistently: there are few communities

which cannot secure any kind of government which a majority of voters in two or three successive elections insist upon. If voters are apathetic, or if there is fraud in counting the votes (a frequent and dangerous method of defeating the public will), a determined public protest by men of known character and force in the community has a terrifying effect on bad government.

Occasionally, of late years, good men have adopted the mob method of securing their ends. A notable case was the appearance in the session of the Chicago city council of a body of armed men, who threatened to shoot any councilman who voted for an obnoxious street-car franchise. This is simply playing into the hand of the worst element; for it is a method that can be applied equally by the bad citizen to the good councilman.

Yet, for the protection of his legal rights through a free government, the American must be ready to fight if necessary, — not simply to join the army in case of war, but to come out as a special policeman or deputy or as a militiaman, when riots are threatening. The wild-beast element in society is kept down only by the conviction that in the last resort the forces of organized society will fight harder and fight longer. The motto of every American is, and must be, the same as the motto of Massachusetts: *Ense petit placidam sub libertate quietem*, "With the sword under freedom, seek peace and quiet." The two most important lessons for Americans are these: to keep the peace by obedience to law and quiet participation in making a good government; and to use proper means under the law, forcible if necessary, to protect the government from violence and to compel public servants to do their duty.

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